

Self-determination and peace processes

Pathways and stumbling blocks for conflict resolution

John Packer is Director of the Human Rights Research and Education Centre and Neuberger-Jesin Professor of International Conflict Resolution in the Faculty of Law at the University of Ottawa. He previously taught at the Fletcher School (Tufts University) and the University of Essex, held fellowships at Cambridge and Harvard Universities, and has lectured at academic and professional institutions around the world. He worked for 20 years for the UN and the Organisation for Security and Cooperation in Europe (OSCE) and has advised governments, communities, and other actors in over 50 countries. In 2012–2014, he was the Constitutions and Process Design Expert on the UN Mediation Support Unit Standby Team of Experts. Research areas include the intersection of human rights (including minority rights) and security, conflict prevention and quiet diplomacy, international mediation, transitional arrangements, and institutional developments at domestic and multilateral levels.

Sally Holt is Editorial and Research Manager at Conciliation Resources. Since 2000 she has worked at the intersection of conflict, development and human rights, specialising in minority rights, for policy-oriented research centres, NGOs and intergovernmental organisations. She has been Deputy Director at the Democratic Progress Institute, an NGO working on conflict resolution in Turkey, held research positions at Bradford University (Peace Studies) and the Centre on Human Rights in Conflict, University of East London, and served as a Legal Officer at the OSCE High Commissioner on National Minorities. Sally holds an MA in Understanding and Securing Human Rights from the University of London.

Many contemporary violent conflicts result in or arise from claims of self-determination (SD), explicitly or by implication, in disputes over distribution of power, access to resources or other substantive issues. SD conflicts have consistently accounted for some 50 per cent of armed conflicts since the 1960s according to Uppsala University Conflict Data (see further reading). As Louise Arbour has observed, these conflicts represent a 'confluence of law, politics, power, economics and identity'. They often pivot on deep-rooted socio-psychological issues of religious or cultural identity. Where a group is or perceives itself to be systematically discriminated against, marginalised, or disadvantaged within a state, SD is pursued, often over generations at great individual and collective cost. This article introduces the normative framework and state of international relations which provide the reference points for addressing such conflicts. It then examines a set of challenges for peacemaking arising from SD conflicts, particularly in the pre-formal and 'early' phases, before

offering suggestions for third parties seeking to encourage and support conflict actors into dialogue.

Protracted conflicts in a turbulent world

SD disputes and claims typically arise out of frustration with denial of human rights, unaddressed grievances, failed negotiations or violent repression. It is increasingly understood that such frustrated SD claims may in time become accompanied by violence. The Minorities at Risk dataset found a gap of approximately ten years between articulation of grievance and eruption of violence, whereas the Self-Determination Movements dataset argues this is about six years. Thus, early action is critical to interrupt this trajectory. Crucially, the longer the dispute goes unresolved, the more entrenched positions and narratives become. These conflicts are protracted, lasting 30 years on average, again according to the Self-Determination Movements dataset. There are many examples ranging from contexts as diverse as Western

Sahara, Transnistria, Myanmar and West Papua. This timespan sees many processes often engaging third and fourth generation diaspora all over the world.

The contemporary backdrop to such conflicts is a fast-changing global order. The pathways for addressing grievances depend on what channels are already in place for engaging in dialogue and negotiating difference. Resolving SD conflicts is more challenging than ever in a global political environment associated with a diminution in respect and application of international law, rising populism, virulent nationalism, and unilateralism. Action to address such conflicts tends to be ad hoc, reactive, and late. Attention tends to come after conflicts have boiled over and threaten the interests of other states. While norms have developed that can help analyse and address this kind of dispute (for more information, see the Box overleaf), the international legal framework has shortcomings. Notably, the lack of an effective recourse mechanism for the settlement of a SD claim means responses are politicised, turn on power relations, and almost always prove inadequate. As such, situations and claims go unaddressed or run aground when belatedly taken up.

Robust democracies equipped with the political institutions and systems that enable diverse groups to pursue their interests and claims through effective political participation remain the exception rather than the rule. For over a decade democracy has been in retreat. It should be noted however that the 'level' of democracy does not necessarily correlate with attitudes in favour of SD. For example, in Kazakhstan, where no elections have ever met international standards, the Assembly of the Nations of Kazakhstan reflects a state policy of multi-ethnic social revival, self-preservation and unity, and promotion of multicultural development. Meanwhile, many countries generally recognised as democracies still discriminate against minorities and indigenous peoples. Some of the world's largest democracies (eg India, Indonesia, Nigeria, and Brazil) face major challenges in managing diversity and SD claims of varying kinds. Nor have the old, Western democracies resolved their persistent conflicts or SD claims – whether of indigenous peoples or ethnic minorities in Canada or national SD movements in France, Belgium, Spain, the UK or elsewhere in Europe.

Historical oppression, exclusion, exploitation, and injustice are among the origins and drivers of SD claims. Legacies of colonialism include the imposition of borders in attempts to create new nation states (or divide some) with little or no regard for the distribution and ethnic and cultural ties of those living there. In protracted conflicts, unmet or disrespected agreements may stick fast in

conflict narratives – as is the case with the Panglong agreement signed by General Aung San and ethnic leaders in Myanmar in 1947, which promised SD and democratic rights but was never implemented.

Peacemaking challenges

There are persistent difficulties with resolution of SD claims. Fears, misunderstandings, historical experiences, and mistrust, as well as the nature of achieving political change, all combine here to beset these conflicts with challenges long before formal negotiations take hold. The next section outlines five recurrent challenges (amongst many) for forging dialogue. These are commonly associated with misunderstandings about SD and its implications.

Challenge 1. *Allaying fears that self-determination always equates to division and separation*

States tend to equate SD claims with secession. They are thus wary of contacts and encounters that might legitimise the interests of claimants, lest they exacerbate internal tensions and lend recognition to insurgents, rebel groups, 'terrorists', or others (however labelled by states). This can happen even if claims are not framed explicitly in terms of SD, but where the state interprets them as such. This is the case for the Rohingya who have consistently claimed equal rights of citizenship and recognition as an ethnic group within the existing state of Myanmar while eschewing 'separatism'. Territorial gains by separatist movements tend to intensify government concerns that *any* informal interaction implies recognition of the claim to independence. For example, Azerbaijan has long refused all contact with the authorities (and indeed the population) of Nagorny Karabakh.

Mistrust of the notion of SD can also reflect an ideological resistance to the concept of group rights, including minority rights, indigeneity, and the like. This is seen in states that adhere to the French Republican model of the unitary state (eg Turkey, Greece, Egypt), as well as in some non-unitary states that nonetheless promote the singularity of the 'national' community (eg Indonesia's state ideology of *Pancasila*).

The call for SD typically follows long experience of disrespect or disregard of the rights, needs, interests and aspirations of a group or population. Out of frustration, claimants may jump straight to demands for SD, without considering whether this is the most effective way to achieve their aims. In Yemen, for example, the Southern Movement (*al-Hirak*) refers to SD and calls for 'independence'. Yet the conflict is likely more related to issues of poor governance than to identity. The pressing conflict drivers are access to natural resources (including scarce fresh water) and related environmental concerns that will not be solved by creating an independent state. In other cases, a SD movement may already have achieved control

International normative frameworks for understanding and responding to self-determination conflicts

Under the UN Charter, all states are equal in their sovereignty and must respect other states' jurisdiction over their territories and populations. The Charter also requires states to cooperate in maintaining peace and security, including respect for human rights. This raises a fundamental question: if a state is unable or unwilling to protect the security and well-being of SD claimants in its jurisdiction, do other states or the international community have a residual obligation to intervene? There is a duty on all member states to exhaust all peaceful means for settling their disputes, including through mediation and negotiation. Failing that the UN Security Council is mandated to address conflicts which constitute a threat to international peace and security.

Article 1(2) of the UN Charter stipulates 'respect for the principle of equal rights and self-determination of peoples'. Expression of SD as a category and a right is articulated in Article 1 common to the two international covenants for human rights adopted in 1966, as follows:

The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) provide that '*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.*' (common Article 1(1)). States must promote the realisation of this right in conformity with the provisions of the UN Charter. Thus, SD is inextricably linked to peace and development – core objectives of the UN Charter.

SD was further elaborated in the context of decolonisation, and later applied to cases of foreign occupation and racist regimes such as Rhodesia and South Africa through the UN General Assembly resolution 1514(XV) of 1960, followed by UN GA resolution 2625(XXV) of 1970 which adopted the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. The Declaration identified three modes of implementing the right of SD: 'The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people'. These modes of implementation are essentially remedial.

Post-Cold War interpretation broadened the meaning further linking SD with the evolving notion of democratic sovereignty, whereby the legitimacy of authority depends on the consent of the governed and public trust in state institutions. In short, SD has evolved along two lines of distinction:

- » **External SD** involving secession resulting in complete political and legal independence. The right to establish a separate state in cases of colonialism, a racist regime or foreign occupation, has subsequently extended to apply – in exceptional circumstances following exhaustion of all alternatives – where a people suffers sustained repression to an extent equivalent to one of those three categories where the will to secede is clearly expressed. Few cases have met this threshold. The Republic of South Sudan did so in 2011, becoming the newest member state of the United Nations following a deliberate, negotiated process and agreement followed by a referendum with near unanimous support. For some, the 2008 Kosovo declaration of independence should arguably also qualify (despite strong contention) on the combined grounds of the abject illegitimacy of imposed Serbian authority with ongoing repression, the exhaustion of effective alternatives, and the evident threat to international peace and security, as well as the will of the people expressed by an overwhelming majority in a referendum.
- » **Internal SD** has evolved to mean the enjoyment of SD rights by a people within the territory of an existing state, i.e. short of secession. This broadly entails autonomy over certain aspects of governance, often related to minority identity such as language, religion, and culture, political participation, public administration, economic and social development, policing, and justice, and transfrontier relations. These situations are amenable to management or resolution within existing or modified governance arrangements within the same state, through mechanisms like federalism or other forms of decentralisation. One example is the special autonomy arrangement for Aceh in Indonesia (pursuant to a negotiated peace agreement). Central state authorities generally maintain control over core areas such as frontiers, monetary policy, defence, and taxes, but in some cases arrangements may enter these spheres – perhaps to be shared – stopping short of independence or statehood. Non-territorial arrangements for self-governance can also meet demands for recognition of linguistic, religious, or other identity rights, as in the case of language communities in Belgium. These are more suited than territorial arrangements for dispersed populations, i.e. where members of a cultural community are not all concentrated in one geographical area or regions. Guidance for such forms of self-governance has been most developed in the Euro-Atlantic space (see further reading) but is far from limited to it.

over many aspects of governance (eg. education, language, and culture) yet still aspire to SD. The ambition then is more symbolic than one that can be met with practical arrangements for self-governance.

Challenge 2. Understanding and balancing rights and claims

SD does not necessarily threaten the rights of others though it is often perceived as such, generating fear and resistance which can block pathways to dialogue. Fears can be manipulated (notably by unscrupulous actors or 'ethnic entrepreneurs') playing groups off against one another or seeking to undermine the movements' cohesion by highlighting (real or perceived) lack of inclusion within them, or divided interests and multiple or overlapping identities amongst members of the group.

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It is important to observe that, as a matter of coherence, the right of SD is a qualified right and models exist to ensure its enjoyment by one group does not damage the rights of others. This is expressly so for the right of SD in the two UN Covenants which, pursuant to Article 5(1) of the ICCPR, limits the right of 'any State, group or person [...] to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized [...] in the present Covenant.' Notably, in situations where territorial self-governance for one group risks creation of 'minorities within minorities', measures can be put in place to protect the minority within the self-governed territory as they would for a minority group within the state as a whole. For example, such protection was negotiated for ethnic Ukrainians constituting a minority within the Autonomous Republic of Crimea by means of entrenching the autonomy within the (otherwise) unitary state of the Republic of Ukraine (with its ethnic Ukrainian majority) and its constitutional safeguards against secession. All rights, needs and interests need to be respected and creative compromise and accommodations need to be found to do so.

Nevertheless, conflict parties that are seeking SD are often excluded from the early stages of peacemaking, out of concern that the SD claim might dominate the agenda and damage attempts to initiate dialogue. For example, the systematic disregard of grievances expressed by the Anglophones in Cameroon has given rise to the exclusion of certain community representatives in current or nascent peace processes. Tactical exclusion of particular groups or constituencies can have negative implications for

peacemaking in terms of both actors and agenda. Aside from the principles of equality and non-discrimination at stake, failure to include certain groups at any point risks generating greater claims and conflict in the future.

In assessing the nature and implications of grievances (claimed and real) it should be recognised that these may be more strongly felt by groups who face discrimination based on language, culture, and religion. Once a sense of identity-related grievance is entrenched it becomes hard to shift. Cases involving Indigenous peoples, whose whole way of life is tied to the land, are existential by their nature and difficult to negotiate. However, it is not always a question of negotiating control of or access to a finite resource like oil or land; it may be more about recognising and accommodating difference which can be achieved through a vast array of arrangements, including devolved governance and power-sharing arrangements. For example, the successful 2019 Bougainville independence emerged from a lengthy power-sharing arrangement. Measures that do not necessarily require significant material resources such as political declarations, apologies, and status, can also go far in addressing grievances and claims.

Challenge 3. Navigating sensitivities about terminology, recognition, and status

Wariness and confusion about the meaning of SD can see parties fixate unhelpfully on terminology or have differing understandings of the same term. Considerable time, sometimes decades, is spent by intermediaries and peace process support entities shuttling back and forth between conflict parties to find acceptable terminology and framing.

“ Many self-determination conflicts reach a peacemaking impasse due to labelling. ”

Many SD conflicts reach a peacemaking impasse due to labelling. Governments sometimes refuse to acknowledge the significance or even existence of SD conflicts, classifying the claimants as 'terrorists' or criminals, and thus a 'law and order' problem. This problem is acute in situations where SD claimants have already resorted to organised protests, civil disobedience, rebellion, or other ways of contesting state authority. The effect of official proscription makes provision of international support difficult and complicates efforts of mediation (as described in the article on Ogaden in this *Accord*). Examples include the designation of the Tamil Tigers in Sri Lanka as a terrorist organisation, as well as the characterisation by the British government and Unionists of long-running political violence in Northern Ireland as a problem of 'terrorism'. In this case

the British government portrayed the role of state forces as being primarily that of peacekeeping between the 'two communities'. The UK's belated recognition in the Good Friday Agreement 'that it is for the people of the island of Ireland alone, by agreement between the two parts respectively and without external impediment, to exercise their right of self-determination' proved crucial for peace.

Leaders of SD movements may also insist on recognition of their status as politically independent leaders of a contested territory as a precondition for dialogue. For example, the *de facto* government in Abkhazia has resisted peacemaking initiatives that are framed as a step towards re-establishing Georgia's territorial integrity – ie that go through Georgia, have to be approved by the Georgian authorities, or do not refer to Abkhaz leaders as representing an independent state. Similarly, the name given to the territory in question by different actors may be an obstacle to initiating dialogue as in the cases of Nagaland in north-east India and Ambazonia in Cameroon.

Challenge 4. Inclusivity, representation, internal dynamics

No group is homogenous despite expectations from governments, or some in mediation support roles. Proponents of SD come in many forms, including political parties, social movements, feminist groups, religious and community leaders, and individuals acting in their own interests. There are often diverse views internally in relation to the groups' grievances, demands and strategies, including the use of violence. Despite the allure and myths of liberation struggles, many groups seeking SD are not inclusive, representative, or 'democratic' and frequently suffer leadership gaps, with older men dominating decision-making for decades on end.

“ Claims evolve over years as factions and generations within the same community develop different visions of self-determination. ”

Claims also evolve over years as factions and generations within the same community develop different visions of SD. Demographic or other changes may alter the situation. For example, in Spain the Basque SD movement's leaders' gradual acceptance that they could not win their struggle militarily and their decision to seek a negotiated solution exposed many different perspectives and goals within the movement. (For more details on this process, see the article 'Deciding in dialogue – Pathways out of violence for armed opposition groups in Myanmar and the Basque Country' in this edition.)

In the absence of internalised democratic and human rights principles, dispositions may not exist to negotiate and resolve various SD conflicts. Dispositions may also change. For example, a movement against dictatorship (eg the Burmese opposition under Aung San Suu Kyi), may assume a different stance on human rights once in power. In effect, such moral inconsistency can profoundly undermine the legitimacy of groups which seek SD due to their own authoritarian character.

On the other hand, some non-state conflict parties prioritise inclusion as part of their resistance to the actual or perceived exclusive policies of the state. In Turkey, for example, the PKK (Kurdistan Workers' Party) espouses inclusion and gender equality and seeks to promote these ambitions in its approach to peacemaking. (See the article on Syria in this edition exploring the challenges of implementing such an inclusive approach.)

In the last 20 years there has been a momentous effort to explore inclusion in all its aspects in peace processes including representation of half the population – women – and young people (often in fact the majority) and minority groups within minority populations (eg religious minorities within an oppressed ethnic group). Techniques such as national dialogues have come to the fore as a model for greater inclusivity. National dialogues can be a cathartic process of peacefully airing grievances and expressing claims, providing forums to discuss fundamental questions such as identity and belonging, distribution of resources and wealth, and power relations. To be sure, they are not without challenges and can be or become delinked from formal political negotiations. They can also raise expectations in communities of political change that may be distant or prove unsatisfying. Many political movements and armed groups are not used to 'listening' to communities under their control and there are examples, Myanmar comes to mind, of national dialogues that reinforce exclusion and manifest edict-style 'dialogue' by some non-state armed actors. Arguably, resort to national dialogues comes too late – once violence has already erupted – as an instrument of conflict resolution rather than prevention.

Challenge 5. Engaging and managing other states

Self-determination movements receive support from external actors, whether well-organised diaspora, international NGOs, or patron states. In an era of increasingly toxic geopolitics and proxy wars this is a major challenge that is likely set to grow. External backing, particularly from patron or kin-states, can heighten anxieties about secession. History has shown that these fears are not unfounded. But external backing for SD movements is not unlawful, if it proceeds through peaceful

means (although it will surely be perceived as unfriendly). The territorial state may resist this external support (or 'interference') and the involvement of international mediators as it endeavours to undercut SD claims and frame the conflict as an internal 'problem' amenable to law and order solutions. For example, external involvement in the SD processes in Catalonia and the Basque Country have long been rejected by Spain. Sometimes external powers prefer the situation not to be resolved as the status quo serves their interests, for example by giving them access to resources that might be curtailed if SD succeeds. Western Sahara and Transdniestria are cases in point. Narrow interests tend to prevail over conflict resolution and the longer-term interests of local populations.

Conclusion and recommendations

Finding pathways to peace in SD conflicts is fraught with missteps and difficulties for insider mediators as well as external actors. Peace support actors and intermediaries grapple in their efforts to assist conflict parties and communities to move from zero-sum positions to appreciation of the wider range of possibilities generated through concessions and compromises. Each conflict is of course so context specific that we must be careful about generalisations. However, after decades of intense support to address such conflicts there is a core body of effective practice to draw upon. The suggestions below reflect this, and also look to the future for ways

in which peacemaking practice can be elevated to support resolution of these persistent conflicts.

“ **Stakeholder and power analyses should consider the rights and claims of different constituencies.** ”

First, astute and inclusive political analysis is essential for navigating the possible tensions between the rights of different groups within the state and of constituencies within them. Stakeholder and power analyses should consider the rights and claims of different constituencies, how options for their implementation in practice impact on the rights of others, current and consistent application of relevant norms, and what arrangements would help balance the needs and interests of different groups and reconcile differences.

Clear-eyed analysis also requires mapping and understanding of the motivations, aims, forms of power, strategies, and tactics of different actors. This includes understanding the composition and internal dynamics of different groups as well as relations amongst them. Increasingly, digital innovations are of benefit here for gauging sentiments and devising ways to shift toxic

Pro-Scottish independence march in Glasgow, Scotland on 11 January 2020. © NurPhoto via Getty Images



narratives and discourse. (In this edition, the article 'Digital analysis – Peacemaking potential and promise' provides an overview of developments.) Comprehensive analysis includes demographic data and trends; power distribution/s (territorial, administrative divisions and mandates, as well as non-territorial cultural autonomy arrangements); key actors and relationship dynamics; forms of violence, repression, resistance and social mobilisation; and conflict resolution and management scenarios.

Second, one size does not fit all. There is no one model that can be applied in all circumstances. Real experiences (positive and negative) of developing and implementing policy and law inform practical responses to commonly confrontational issues around inclusion, representation, and diversity, as well as the clash of competing visions for development. Responses with alternatives can be carefully tailored and supported with suggestions based on analysis of the issues, demands, needs, and interests in terms of what is reasonable, proportionate, and ultimately persuasive in the situation. Conflict parties and communities can be supported to develop their understanding of the meaning and content of SD and explore possible avenues for meeting demands that do not require secession. Making the arguments and providing examples of effective diversity management that accommodate difference and respect the rights of all within the state's jurisdiction can inform this process. Options include different forms of shared or devolved governance including all kinds of power sharing and forms of effective participation at the central level, as well as various models of decentralisation. Scenario development with conflict parties and communities, including exploration of non-territorial models of self-governance beyond territorial or power-sharing arrangements that parties may be more familiar with, can open new possibilities for reframing claims and reaching agreements.

Third, mediation and peace process support entities can – if credible, effective, and open to adaptation – play invaluable roles in accompanying conflicting parties and communities caught in conflict to clarify understandings, aspirations and demands. Critical evidence-informed support is vital for thinking through context-specific subjective aims and what is needed to meet them. Central to this role is advice on the consequences of invoking and advancing specific concepts, claims and terms. Peace support actors can also identify or create informal channels valuable for testing ideas and reframed claims, and for building relationships. This type of work requires time, patience, and flexible donors with bandwidth for

'failing forward' as this area of peace process support requires repeat and persistent efforts.

Finally, peace support actors are well-positioned to build professionalism and bolster specialised knowledge in conflict prevention, management, and resolution – starting with early dialogue – among CSOs, insider mediators and influencers at national and sub-national levels. Knowledge and skills support can enhance the effectiveness of those engaged in conflict, security and mediation roles in international and regional inter-governmental organisations, particularly regarding substantive understanding of the breadth of arrangements available for addressing SD conflicts and their advantages and drawbacks depending on contextual variables. This should include an understanding of available (albeit limited) international recourse mechanisms for dealing with SD conflicts. For example, adjudication on a SD claim brought by Indigenous people before the Inter-American Court of Human Rights (as in the case of *Lhaka Honhat Association (Our Land) vs. Argentina*) may not resolve the problem (due to lack of implementation by the respondent state), but can affect the terms of subsequent negotiation. Related to this, the creation of more robust international recourse mechanisms would support the development of principled and consistent responses in addressing SD claims in contrast to the current prevalence of politicised and inadequate responses. Measures could include revitalisation for the Special Political and Decolonization Committee (Fourth Committee) of the UN General Assembly and improved operationalisation of the two UN Covenants and their supervisory bodies which currently do not treat SD claims under common Article 1.

There is no doubt that the notion of SD and the variety of claims to which it has given rise are among the most complex and thorny issues of international relations. Careful unpacking of situations to understand their causes, dynamics and options for resolution is essential. This knowledge needs to be cultivated across a range of actors and applied as early as possible – when the chances for success are greatest and before positions become hardened, irreparable harm is done and violence envelopes the conflict.