

Notes

SECESSION: STATE PRACTICE AND INTERNATIONAL LAW AFTER THE DISSOLUTION OF THE SOVIET UNION AND YUGOSLAVIA

"No people must be forced under sovereignty under which it does not wish to live."¹

Woodrow Wilson

"Positive International Law does not recognise the right of national groups, as such, to separate themselves from the State of which they form [a] part by the simple expression of a wish"²

*League of Nations International
Commission of Jurists*

I. INTRODUCTION

The juxtaposition of these statements illustrates the ongoing tension in international law between the establishment of a right of secession of minority groups within sovereign states and the goal of maintaining international order and the status quo. Recognition of a general right of secession under international law has historically been

1. MESSAGE FROM PRESIDENT WILSON TO RUSSIA ON THE OCCASION OF THE VISIT OF THE AMERICAN MISSION (June 9, 1917), *reprinted in* OFFICIAL STATEMENTS OF WAR AIMS AND PEACE PROPOSALS, DECEMBER 1916 TO NOVEMBER 1918, at 105 (James B. Scott ed., 1921).

2. LEAGUE OF NATIONS O.J. Spec. Supp. 3, at 5 (1920).

disfavored by the international community.³ In addition, there is little evidence under customary international law to support the existence of a secession right.⁴ However, recent developments, including the practice of states in the aftermath of the breakup of the Soviet Union and Yugoslavia, suggest that customary international law may be in the nascent stages of a transition toward the recognition of a secession right.⁵ Although these developments have been accompanied by increased scholarly interest in the subject of secession,⁶ there is no basis for concluding that recent state practice alone evinces the existence of a secession right under international law.⁷ In addition, there is broad disagreement among scholars as to the form any secession right ought to take.⁸

This Note surveys the current status of international law with respect to secession and presents normative arguments concerning the proper structure and content of, as well as proper limits on, a general right of secession. Part II examines the history of several important secession movements since World War II and the international community's response to them as evidence that no general right of secession has historically existed under international law. Part III assesses the evolution of the world community's approach to secession movements as illustrated by recent state practice, including the secessions of the Baltic states from the Soviet Union in 1991 and the secessions of Slovenia, Croatia, and Bosnia-Herzegovina from Yugoslavia in 1992. Additionally, Part III considers how a right of secession might come to be accepted under international law. Part IV explores the virtues and deficiencies of several competing normative arguments concerning the proper form a right of secession should take

3. See HURST HANNUM, *AUTONOMY, SOVEREIGNTY, AND SELF-DETERMINATION* 49 (1990) (discussing state practice and the "weight of authority" as indicating that no secession right exists). *But cf.* LEE C. BUCHHEIT, *SECESSION: THE LEGITIMACY OF SELF-DETERMINATION* 96 (1978) (concluding that there has been a "limited acceptance" of the legitimacy of secessionist self-determination under positive international law).

4. See *infra* notes 9–23, 92–109 and accompanying text.

5. See *infra* notes 115, 205–06 and accompanying text.

6. A number of works published since 1990 and focusing upon secession demonstrate the recent increase in scholarly interest in the subject. *E.g.*, ALLEN E. BUCHANAN, *SECESSION: THE MORALITY OF POLITICAL DIVORCE FROM FORT SUMTER TO LITHUANIA AND QUEBEC* 4 (1991); Lea Brilmayer, *Secession and Self-Determination: A Territorial Interpretation*, 16 *YALE J. INT'L L.* 177 (1991); Allen Buchanan, *Self-Determination and the Right to Secede*, 45 *J. INT'L AFF.* 347 (1992); Alexis Heraclides, *Secession, Self-Determination and Nonintervention: In Quest of a Normative Symbiosis*, 45 *J. INT'L AFF.* 399 (1992).

7. See *infra* notes 207–19 and accompanying text.

8. See *infra* notes 231–60 and accompanying text.

as well as the appropriate limits on its exercise. Part IV also presents arguments concerning the legal responsibilities that should be imposed upon third-party states by the recognition of a secession right under international law.

II. SECESSION UNDER INTERNATIONAL LAW IN HISTORICAL CONTEXT

Proving that no right of secession exists under international law is a complicated undertaking. In order for a right of secession to exist as a principle of customary international law, several criteria related to state practice must be satisfied.⁹ First, a right of secession must be recognized by a number of states through continuous or repetitious, concordant practice over a considerable period of time.¹⁰ This recognition of secession must include the understanding that such practice is required by or is consistent with prevailing international law.¹¹ Second, there must be general acquiescence or consent to this practice by other states.¹² In addition, there is authority supporting the proposition that a new rule of customary international law can be established within a relatively short period of time so long as there is extensive and uniform state practice evincing general recognition of such a rule.¹³ Thus, the customary behavior of states can reveal the existence of an international legal principle such as a right of secession. If states have historically and consistently approved of the efforts of certain seceding groups, whether through prompt recognition of

9. See Manley O. Hudson, Working Paper, *Article 24 of the Statute of the International Law Commission*, [1950] 2 Y.B. INT'L L. COMM'N 24, 26, U.N. Doc. A/CN.4/16. See generally *The Paquete Habana*, 175 U.S. 677, 686-712 (1900) (recognizing custom as a source of international law).

10. Hudson, *supra* note 9, at 26; see also RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 102(2) (1986) [hereinafter RESTATEMENT OF FOREIGN RELATIONS] ("Customary international law results from a general and consistent practice of states followed by them from a sense of legal obligation.").

11. Hudson, *supra* note 9, at 26.

12. *Id.*

13. The opinion of the International Court of Justice in the *North Sea Continental Shelf Cases* stated that:

[a]lthough the passage of only a short period of time is not necessarily . . . a bar to the formation of a new rule of customary international law . . . , an indispensable requirement would be that within the period in question, short though it might be, State practice, including that of States whose interests are specifically affected, should have been both extensive and virtually uniform . . . and should moreover have occurred in such a way as to show a general recognition that a rule of law or legal obligation is involved.

North Sea Continental Shelf Cases (F.R.G. v. Den.; F.R.G. v. Neth.), 1969 I.C.J. 4, 44, para. 74 (Feb. 20).

secessionists or through the supply of aid to them, such customary practice could indicate that an unarticulated right of secession exists. In order to determine whether such a customary right of secession exists, it is necessary to examine the international response to secession efforts, as well as the resolutions and documents of multinational organizations.

A. Multinational Organizations and the Right of Secession

1. *The League of Nations.* An advisory opinion handed down by the International Commission of Jurists in 1920, under the auspices of the Council of the League of Nations, characterized the status of international law with respect to secession in the following manner: "Positive International Law does not recognize the right of national groups, as such, to separate themselves from the State of which they form a part by the simple expression of a wish. . . ."¹⁴ The opinion characterized decisions by states about whether to grant portions of their populations the right to choose their own political destinies through plebiscites or other means as exclusively domestic matters.¹⁵ The Commission of Jurists expressly declined, however, to give an opinion as to whether a "continued abuse of sovereign power to the detriment of a section of the population of a State" would give rise to an international dispute.¹⁶ The statement of the Commission of Jurists provides some evidence that a right of secession has not been historically recognized under international law and was not recognized by the League of Nations. However, more recent declarations by the United Nations and other multinational entities rejecting the right to secede in the postcolonial period, coupled with evidence of state behavior in opposition to secession movements, are needed to establish that no secession right exists under international law at the present time.

2. *The United Nations.* Several documents and resolutions promulgated by the United Nations expressly affirm the existence of a right of self-determination. Article 1(2) and Article 55 of the United Nations Charter both express "respect for the principle of equal rights

14. LEAGUE OF NATIONS, *supra* note 2, at 5. The Commission of Jurists was entrusted by the League of Nations to issue an advisory opinion on the legal implications of the request by the Åland Islands for separation from Finland and annexation by Sweden. BUCHHEIT, *supra* note 3, at 70-71.

15. LEAGUE OF NATIONS, *supra* note 2, at 5.

16. *Id.*

and self-determination of peoples.”¹⁷ Paragraph 2 of the Declaration on the Granting of Independence to Colonial Countries and Peoples states that “[a]ll peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”¹⁸ Additionally, Article 1 of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights contain language almost identical to this quotation.¹⁹ The Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations (Declaration on Friendly Relations) deals more extensively with the principle of self-determination than these other documents.²⁰ Written comments from United Nations member states submitted to the Special Committee that drafted the Declaration on Friendly Relations indicate that the majority of United Nations members did not recognize secession as a legitimate form of self-determination.²¹

There are no United Nations documents that expressly recognize a general right of secession stemming from the concept of self-determination.²² Moreover, a statement made by United Nations Secretary-

17. U.N. CHARTER art. 1, para. 2; *id.* art. 55.

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

19. *International Covenant on Civil and Political Rights*, G.A. Res. 2200, U.N. GAOR, 21st Sess., Supp. No. 16, at 52-53, U.N. Doc. A/6316 (1966); *International Covenant on Economic, Social, and Cultural Rights*, G.A. Res. 2200, U.N. GAOR, 21st Sess., Supp. No. 16, at 49, U.N. Doc. A/6316 (1966).

20. *Compare Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations*, G.A. Res. 2625, U.N. GAOR, 25th Sess., Supp. No. 28, at 121, 123-24, U.N. Doc. A/8028 (1970) [hereinafter *Declaration on Friendly Relations*] with sources cited *supra* notes 17-19. No clear definition has been formulated for the term “peoples” to whom the right of self-determination applies under these United Nations documents. See AURELIU CRISTESCU, *THE RIGHT TO SELF-DETERMINATION: HISTORICAL AND CURRENT DEVELOPMENT ON THE BASIS OF UNITED NATIONS INSTRUMENTS* at 37-41, U.N. Doc. E/CN.4/Sub.2/404/Rev.1, U.N. Sales No. E.80.XIV.3 (1981) (describing the resulting difficulty of determining the beneficiaries of the right of self-determination).

21. BUCHHEIT, *supra* note 3, at 89-90.

22. Lee C. Buchheit asserts that “[t]he history of United Nations practice lends substantial support to the thesis that the principle of self-determination, as interpreted by that body, is primarily a vehicle for decolonization, not an authorization of secession.” *Id.* at 87. However, Buchheit interprets paragraph 7 of the Declaration on Friendly Relations as seeming “to recognize, for the first time in an international document of this kind, the legitimacy of secession under certain circumstances.” See *id.* at 92.

Paragraph 7 of the Declaration on Friendly Relations states:

General U Thant in 1970 asserted that the United Nations has never accepted the principle of secession.²³ Given the absence of more recent declarations by multinational organizations, such as the United Nations, which expressly reject or endorse a right of secession as a general principle of international law, it is necessary to examine the patterns of behavior of states to determine whether a right of secession has customarily been recognized by the states that compose the international community. For this purpose, the international response to secession efforts in Katanga, Biafra, and Bangladesh is outlined below.

B. Katanga

During the attempted secession of Katanga from the newly independent Congo in the early 1960s, the response of the international community to the dispute evolved from initial efforts to maintain neutrality into outright opposition to secession. Following the proclamation of Congolese independence from Belgium on June 30, 1960, civilian riots and mutiny in the Congolese military ensued.²⁴ Moise Tshombe, the leader of the Congolese province of Katanga, requested that Belgian troops intervene in Katanga to restore order.²⁵ Despite the fact that a treaty between Belgium and the new central Congolese government permitted the intervention of Belgian troops

Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.

Declaration on Friendly Relations, supra note 20, at 124. Buchheit interprets this paragraph as indicating that:

if a government does not represent the whole people it is illegitimate and thus in violation of the principle of self-determination, and this illegitimate character serves in turn to legitimate 'action which would dismember or impair, totally or in part, the territorial integrity or political unity' of the sovereign and independent State.

BUCHHEIT, *supra* note 3, at 93.

23. "As an international organization, the United Nations has never accepted and does not accept and I do not believe it will ever accept the principle of secession of a part of [a] Member State." *Secretary-General's Press Conferences, UN MONTHLY CHRON.*, Feb. 1970, at 34, 36.

24. Thomas M. Franck & John Carey, Working Paper, *The Role of the United Nations in the Congo — A Retrospective Perspective*, in *THE ROLE OF THE UNITED NATIONS IN THE CONGO* 1, 11-12 (Lyman M. Tondel, Jr. ed., 1963).

25. CATHERINE HOSKYNs, *THE CONGO: A CHRONOLOGY OF EVENTS, JANUARY 1960-DECEMBER 1961*, at 2-3 (1962).

only at the request of the Congolese minister of defense,²⁶ Belgian troops intervened in Katanga and throughout the Congo on July 10, 1960.²⁷ Tshombe declared Katanga's independence from the Congo the next day,²⁸ and by August 4, 1960, a constitution had been approved by the Katanga Assembly establishing Katanga as an independent sovereign state.²⁹ Immediately following the declaration of Katanga's secession, Tshombe called upon the international community to recognize Katangan independence and sought the admission of Katanga into the United Nations.³⁰ Despite these appeals, Katanga was never formally recognized by any country.³¹

In response to the Belgian military action, the United Nations Security Council adopted a resolution on July 14, 1960, calling for the withdrawal of Belgian troops and authorizing the United Nations Secretary-General to provide the Congolese government with the military assistance necessary to bring the situation under control.³² However, Tshombe indicated on July 27, 1960, that he would not allow United Nations troops into Katanga.³³ United Nations troops eventually intervened against Tshombe's wishes and became involved in heavy fighting in Katanga, particularly during late 1961.³⁴

Initially, the United Nations attempted to limit its involvement in the Congo to countering Belgian intervention while neither encouraging nor suppressing the Katangan secession.³⁵ However, following a chain of political incidents between September 1960 and September 1961, the Security Council's approach to the situation in Katanga changed dramatically.³⁶ On November 24, 1961, the Security Council

26. Treaty of Friendship, June 29, 1960, Belg.-Congo, *reprinted in* HOUSE COMM. ON FOREIGN AFFAIRS, 86TH CONG., 2D SESS., STAFF MEMORANDUM ON THE REPUBLIC OF THE CONGO app. at 58 (Comm. Print 1960).

27. HOSKYNS, *supra* note 25, at 3; Franck & Carey, *supra* note 24, at 12-13.

28. HOSKYNS, *supra* note 25, at 3; RENÉ LEMARCHAND, POLITICAL AWAKENING IN THE BELGIAN CONGO 246 (1964).

29. HOSKYNS, *supra* note 25, at 4. Tshombe was elected President of the new state on August 7, 1960. *Id.*

30. CATHERINE HOSKYNS, THE CONGO SINCE INDEPENDENCE, JANUARY 1960 TO DECEMBER 1961, at 146 (1965); Franck & Carey, *supra* note 24, at 13.

31. HOSKYNS, *supra* note 30, at 146.

32. S.C. Res., U.N. SCOR, 15th Sess., 873d mtg., Supp. for July-Sept. 1960, at 16, U.N. Doc. S/4387 (1960).

33. HOSKYNS, *supra* note 25, at 4.

34. For a detailed account of the war in Katanga and the involvement of the United Nations in the fighting, see HOSKYNS, *supra* note 30, at 85-467.

35. S.C. Res., U.N. SCOR, 15th Sess., 886th mtg., Supp. for July-Sept. 1960, at 91-92, U.N. Doc. S/4426 (1960).

36. *See infra* notes 42-44 and accompanying text.

adopted a resolution which stated that one purpose of the involvement of the United Nations was "[t]o maintain the territorial integrity and the political independence of the Republic of the Congo. . . ."³⁷ Paragraph 8 of the resolution declared that all secessionist activities conducted against the Congolese government were contrary to both the Congolese Constitution and Security Council decisions and contained the demand that secessionist activities in Katanga cease.³⁸

There are several possible reasons for the international community's shift toward opposition of the Katangan secession. During the early phases of the secession effort, there was misplaced concern in the international community that the Tshombe regime did not represent the wishes of the majority of the Katangan population and was therefore illegitimate.³⁹ There were also concerns that the Congo could not survive without its most populous and economically vital province⁴⁰ and that the secession was being supported by Belgium and other Western states to protect "business concerns" in Katanga.⁴¹ The deterioration of the Congolese central government following Katanga's declaration of independence amplified these general concerns.⁴² In addition, the secession of the Baluba of Northern Katanga from Katanga itself in January 1961 suggested that international recognition of the legitimacy of the Katangan secession would not bring an end to separatist demands in the Congo.⁴³

37. S.C. Res., U.N. SCOR, 16th Sess., 982d mtg., Supp. for Oct.-Dec. 1961, at 148, U.N. Doc. S/5002 (1961).

38. *Id.* at 149.

39. Catherine Hoskyns notes that Tshombe announced the Katangan secession without having attempted to gauge public support for independence. HOSKYNs, *supra* note 30, at 149. However, Tshombe's Conakat political party outpolled its rival parties in elections for the Katanga Provincial Assembly in the spring of 1960, receiving support from multiple ethnic groups in Katanga. LEMARCHAND, *supra* note 28, at 243-44, 247. This support was attributable in part to perceived economic grievances which many Katangans shared toward the other Congolese regions and indicates that concerns about a lack of public support for separation were unfounded. *Id.* at 247.

40. See HOSKYNs, *supra* note 30, at 149; LEMARCHAND, *supra* note 28, at 235 (noting the "overwhelming concentration of economic resources" in Katanga). Prior to Congolese independence, the Belgian colonial administration of the Congo derived 60 percent of its revenue from Katanga. See BUCHHEIT, *supra* note 3, at 142.

41. BUCHHEIT, *supra* note 3, at 152; see also HOSKYNs, *supra* note 30, at 149-50 (opining that the protracted Katangan secession effort would not have been possible without the assistance of the Belgian military).

42. For a discussion of the constitutional crisis which gripped the Congolese central government in late 1960, see HOSKYNs, *supra* note 30, at 197-246; CRAWFORD YOUNG, POLITICS IN THE CONGO: DECOLONIZATION AND INDEPENDENCE 325-30 (1965).

43. BUCHHEIT, *supra* note 3, at 149, 152-53. For a discussion of the differences between the Lunda and Bayeke of Southern Katanga and the Baluba that precipitated the split, see

Perhaps most significantly, frustration over military setbacks endured by United Nations troops in skirmishes with Katangan soldiers and foreign mercenaries, as well as the death of the United Nations Secretary-General in an unexplained plane crash during a visit to the Congo in September 1961, may have led the United Nations to abandon its impartial stance.⁴⁴ Some of the reasons for the international community's disapproval of the Katangan secession were unique to the Katangan situation.⁴⁵ Nevertheless, viewed in historical context, the ultimate disapproval of the Katangan secession by the United Nations is significant because it established a precedent for the international community's abandonment of an impartial stance toward a secessionist movement in the face of political and military frustration.

C. Biafra

The response of the international community to the attempted secession of Biafra from Nigeria in the early 1960s provides further evidence that a right of secession has not been established as an international legal principle based upon customary state practice. Following Nigeria's independence from Great Britain in 1960, tensions among the three major Nigerian ethnic groups led to secessionist rumblings.⁴⁶ Nigeria had a federated structure composed of a large, landlocked northern region dominated by the Muslim Hausa-Fulani, an eastern region dominated by the majority Christian Ibo, a western region dominated by the Yoruba, and a small, more uniformly multitribal middle western region.⁴⁷ A northern-dominated military coup in July 1966 was followed by efforts by the new regime to consolidate the power of the central government and rein in the autonomy of the eastern region.⁴⁸ Tensions increased as widespread rioting in the northern region led to the killing of an estimated ten thousand easterners living there and the expulsion or exodus of many

DONALD L. HOROWITZ, *ETHNIC GROUPS IN CONFLICT* 255-56 (1985); YOUNG, *supra* note 42, at 540-44.

44. See HOSKYNs, *supra* note 30, at 428-47 (describing events in the aftermath of United Nations military setbacks and the death of the United Nations Secretary-General).

45. See *infra* notes 59-64 and accompanying text.

46. For a more thorough analysis of the ethnic and political tensions in the period preceding the Biafran secession, see OKWUDIBA NNOLI, *ETHNIC POLITICS IN NIGERIA passim* (1978); CRAWFORD YOUNG, *THE POLITICS OF CULTURAL PLURALISM* 460-72 (1976).

47. BUCHHEIT, *supra* note 3, at 162; A.H.M. Kirk-Greene, *The Peoples of Nigeria: The Cultural Background to the Crisis*, 66 AFR. AFF. 3, 5-6 (1967).

48. BUCHHEIT, *supra* note 3, at 165-66.

more in the autumn of 1966.⁴⁹ Following failed efforts at reconciliation, the eastern region seceded from Nigeria on May 30, 1967, calling itself the Republic of Biafra.⁵⁰ After more than two and a half years of civil war, the chief of staff of the Biafran army surrendered to the federal government, ending Biafra's secessionist bid on January 12, 1970.⁵¹

The varying responses of individual states and multinational organizations to Biafra's effort to secede from Nigeria highlights the absence of a consistent pattern of state practice with respect to secession. Throughout the crisis, the United Nations did not even consider the events in Nigeria.⁵² The United Nations' hesitancy to become involved in the matter may be explained by its extensive and costly involvement in the suppression of the Katangan secession during the early 1960s.⁵³ In contrast, the Organization of African Unity opposed the secession in a resolution, recognizing the situation as an "internal affair" and "[r]eiterating their condemnation of secession in any Member States. . . ."⁵⁴

Arms sales by individual states to the federal government of Nigeria during the Biafran secession effort demonstrate the extent to which third parties have intervened with legal impunity in the affairs of states during secession crises.⁵⁵ Great Britain and the Soviet Union not only continued to supply the Nigerian federal government with arms following the Biafran secession but also competed with one another in terms of volume of armaments supplied in order to prevent the erosion of their political influence in Nigeria.⁵⁶ In contrast, the United States imposed an embargo on the sale of American weapons to either side in the Nigerian conflict.⁵⁷ This differing approach to

49. JOHN DE ST. JORRE, *THE NIGERIAN CIVIL WAR* 85-86 (1972).

50. Ojukwu Secedes and Declares the Republic of Biafra, Declaration made at Enugu (May 30, 1967), in 1 A.H.M. KIRK-GREENE, *CRISIS AND CONFLICT IN NIGERIA: A DOCUMENTARY SOURCEBOOK 1966-1969*, at 451-53 (1971).

51. Lt.-Col. Effiong Announces Surrender of Biafra (B.B.C. ME/3277/B1, Jan. 11, 1970), in 2 A.H.M. KIRK-GREENE, *CRISIS AND CONFLICT IN NIGERIA: A DOCUMENTARY SOURCEBOOK 1966-1969*, at 451-52 (1971).

52. BUCHHEIT, *supra* note 3, at 168-69.

53. *See id.* at 168.

54. *O.A.U. Resolution on Situation in Nigeria*, AHG/Res.51 (IV) (1967), reprinted in 6 I.L.M. at 1243 (1967).

55. *See* BUCHHEIT, *supra* note 3, at 175.

56. *Id.* at 171-72. For a discussion of Soviet motives in supplying arms to the Nigerian federal government, see DE ST. JORRE, *supra* note 49, at 181-84.

57. *U.S. Regrets Soviet Decision to Supply Arms to Nigeria*, 57 DEP'T ST. BULL. 320 (1967) (text of statement read to reporters by a United States Department of State spokesperson on

arms sales appears to reflect a disagreement among members of the international community as to the proper role of third parties once hostilities have broken out following an attempted secession. The two approaches also evidence the failure of the international legal system to address adequately the existence of a secession right as well as the uncertainties surrounding third-party states' responsibilities following the invocation of such a right.⁵⁸

The unwillingness of most members of the international community to recognize the legitimacy of the Biafran secession is even more compelling than the disapproval of the Katangan secession six years earlier.⁵⁹ In contrast to the circumstances of the Katangan secession, there is little question that the surviving Nigerian state could have maintained its continued economic vitality following the secession of Biafra.⁶⁰ In addition, the cultural and historical differences between the Ibos of the eastern region and the dominant ethnic groups of the rest of Nigeria, as well as the support of the Ibos for the Biafran regime, were clear.⁶¹ Both the oppression and killing of easterners at the hands of northerners prior to the secession⁶² provide further evidence that the easterners had a legitimate moral claim to secession.⁶³ Finally, the length of the civil war and the tenacity of the Biafran fighters are strong evidence of the Biafran claim to be a distinct group desiring full independence.⁶⁴

Both the Katangan and Biafran secessions raised concerns in the international community over whether recognition of the secessionists might encourage a flood of similar secession efforts elsewhere, as well as over the fate of unrepresented minority groups that would become "trapped" within the newly independent Katangan and Biafran

August 21, 1967).

58. See BUCHHEIT, *supra* note 3, at 170; see also Rosalyn Higgins, *Intervention and International Law*, in INTERVENTION IN WORLD POLITICS 29, 40-42 (Hedley Bull ed., 1984) (describing the recent increase in intervention by third-party states in civil conflicts and the legal uncertainty stemming from this apparent shift in state practice).

59. See *supra* notes 35-44 and accompanying text. Tanzania, Gabon, Ivory Coast, and Zambia recognized Biafra between April 13 and May 20, 1968. DE ST. JORRE, *supra* note 49, at 193-94. Haiti also recognized Biafra. BUCHHEIT, *supra* note 3, at 170. The governments of France, China, Portugal, Rhodesia, South Africa, and Israel also offered varying degrees of overt support for Biafra. DE ST. JORRE, *supra* note 49, at 184-85, 210-11, 218-20.

60. See DE ST. JORRE, *supra* note 49, at 133.

61. BUCHHEIT, *supra* note 3, at 173.

62. See *supra* note 49 and accompanying text.

63. BUCHHEIT, *supra* note 3, at 174.

64. *Id.*

states.⁶⁵ However, the failure of states to justify opposition to the Katangan and Biafran secessions on the basis of such concerns⁶⁶ suggests that other factors, including political self-interests, best explain why these secession efforts were not supported.⁶⁷

D. Bangladesh

The secession of Bangladesh from West Pakistan in 1971 is a rare example of a successful secession movement occurring prior to the secessions of the Baltic states from the Soviet Union in 1991.⁶⁸ In contrast to Katanga and Biafra, whose secession movements received little support from the international community,⁶⁹ Bangladesh is now an independent sovereign state that has been widely recognized by the governments of its sister states and that occupies a seat in the United Nations.⁷⁰ This reality raises the question of whether there are certain factors or circumstances that permitted the secession of Bangladesh to be recognized as legitimate in the eyes of the international community and that might evince the acceptance of a right of secession in certain instances.

Prior to the achievement of its independence, the territory which is now Bangladesh was the eastern portion of the Muslim state of Pakistan. An important feature of Pakistani geography was the division of the country into two noncontiguous parts. These were West Pakistan, which is present day Pakistan, and East Pakistan, which was separated from the western provinces by over one thousand miles of Indian territory.⁷¹ Furthermore, the climate, language, and ethnic composition of the two components were markedly different.⁷² During the two decades following the creation of the Pakistani state, East Pakistanis became increasingly dissatisfied with what were

65. *Id.* at 174-75.

66. See *supra* notes 37-41, 53-57 and accompanying text (discussing the international community's reaction to the Katangan and Biafran secessions that ranged from inaction to condemnation but that did not expressly cite encapsulation of minorities as a basis for the condemnation).

67. See BUCHHEIT, *supra* note 3, at 170.

68. Donald L. Horowitz, *A Harvest of Hostility: Ethnic Conflict and Self-Determination After the Cold War* 21 (Aug. 11, 1992) (unpublished manuscript, on file with author).

69. See BUCHHEIT, *supra* note 3, at 211; *supra* notes 35-44, 52-54, 59 and accompanying text.

70. BUCHHEIT, *supra* note 3, at 211.

71. See SECRETARIAT OF THE INTERNATIONAL COMMISSION OF JURISTS, *THE EVENTS IN EAST PAKISTAN, 1971*, at 9 (1972).

72. *Id.*

perceived as inequitable economic and political policies promulgated by the dominant West at the expense of the East.⁷³ Following elections in late 1970, which were to precede the formation of a new Pakistani constitution, the Awami League, a Bengali political party that had won an overwhelming victory in East Pakistan,⁷⁴ demanded that the new constitution provide for an extremely loose federal system that would guarantee East Pakistan control over its own fiscal policy, militia, negotiation of foreign trade, and foreign exchange accounts.⁷⁵

Disagreement over the implementation of the Awami League's demands for greater constitutional autonomy for East Pakistan delayed the formation of a new government and caused the escalation of tensions and civil unrest in East Pakistan.⁷⁶ On March 25, 1971, the military, dominated by West Pakistanis, began a campaign to suppress the perceived secessionist threat in East Pakistan by outlawing the Awami League and imprisoning or killing its leaders.⁷⁷ It is estimated that the military killed thousands of civilians in East Bangladesh during the first forty-eight hours of the crackdown.⁷⁸ On March 26, 1971, a group calling itself the Bangladesh Liberation Army declared that East Pakistan was an independent sovereign state which would be named Bangladesh.⁷⁹ Most Awami League leaders escaped the crackdown and later established a self-proclaimed government-in-exile for Bangladesh in Calcutta, India.⁸⁰

Indian intervention in the events in East Pakistan gradually increased from permitting East Pakistani guerrillas to use Indian territory as a sanctuary, to supplying arms to the secessionists.⁸¹ Recurring border skirmishes preceded the outbreak of open warfare

73. *Id.* at 9-12; SUBRATA R. CHOWDHURY, *THE GENESIS OF BANGLADESH: A STUDY IN INTERNATIONAL LEGAL NORMS AND PERMISSIVE CONSCIENCE* 9-21 (1972).

74. SECRETARIAT OF THE INTERNATIONAL COMMISSION OF JURISTS, *supra* note 71, at 12.

75. *Id.* The "Six Points" plan upon which the Awami League party had campaigned prior to the election contained these specific provisions. *Id.* Following the Awami League's overwhelming election victory, the party refused to compromise on its constitutional demands. *Id.* at 13-14.

76. *Id.*

77. BUCHHEIT, *supra* note 3, at 205-06; SECRETARIAT OF THE INTERNATIONAL COMMISSION OF JURISTS, *supra* note 71, at 26-27.

78. SECRETARIAT OF THE INTERNATIONAL COMMISSION OF JURISTS, *supra* note 71, at 27. Even officials of West Pakistan admit that the army killed between 15,000 and 30,000 civilians between March and December of 1971, and such estimates are likely to be conservative. *Id.* at 36-37.

79. *Id.* at 30.

80. *Id.*

81. BUCHHEIT, *supra* note 3, at 207.

between India and Pakistan on December 3, 1971.⁸² India formally recognized Bangladesh several days later.⁸³ The intervention by Indian troops was decisive, and on December 16, 1971, the Pakistan military surrendered unconditionally in Dacca, the former capital of East Pakistan.⁸⁴

The posture that individual states adopted toward the secession effort by East Pakistan varied depending upon their underlying interests and political alliances. For example, the Soviet Union "strongly supported" India, and thus East Pakistan, while China and the United States supported Pakistan.⁸⁵ The policies of these third-party states appeared to reflect a much greater concern with balance of power politics than with adherence to a consistent position on secession in their policies toward Bangladesh.⁸⁶ Although United States Secretary of State William Rogers did indicate that the Nixon administration disapproved of the theory that a general right of secession exists,⁸⁷ the policy of the United States toward East Pakistan's secession effort appeared to be primarily a response to Sino-Soviet alignments in South Asia.⁸⁸

The cultural, ethnic, and economic differences between East and West Pakistan do not, by themselves, distinguish Bangladesh's successful secession effort from the failed efforts in Biafra and Katanga,⁸⁹ where such differences also existed.⁹⁰ Likewise, the geographical separation of East and West Pakistan alone could not legitimize the Bangladesh secession effort.⁹¹ It appears that the distinguishing feature explaining the success of the Bangladesh

82. SECRETARIAT OF THE INTERNATIONAL COMMISSION OF JURISTS, *supra* note 71, at 43.

83. *Id.* at 87.

84. *Id.* at 43-44.

85. KABIR U. AHMAD, *BREAKUP OF PAKISTAN 1-2* (1972); BUCHHEIT, *supra* note 3, at 208.

86. *See* A.M.A. MUHITH, *BANGLADESH: EMERGENCE OF A NATION* 355-56 (1978) (describing China as "clearly guided by her own interests in deciding to support Pakistan" and as distressed by the prospect of expanded Soviet influence in the region); *see also* AHMAD, *supra* note 85, at 1-2 (describing the Indo-Pakistan war as a "shadow war" between the Soviet Union and China).

87. Rogers stated "[w]e did favor, we do favor, unity as a principle, and we do not favor secession as a principle, because once you start down that road it could be very destabilizing." *Secretary Rogers' News Conferences of December 23*, 66 DEPT ST. BULL. 49, 54 (1972).

88. *See* BUCHHEIT, *supra* note 3, at 209.

89. *Id.* at 212-13. Furthermore, the savagery of the West Pakistani-dominated army in suppressing the East Pakistani secession movement is difficult to distinguish from the oppression faced by the Biafrans in pressing their secessionist claim. *Id.* at 213.

90. *See supra* notes 39-40, 43, 46-50 and accompanying text.

91. *See* BUCHHEIT, *supra* note 3, at 212.

secession was Indian intervention, which led to the *de facto* existence of a newly independent state. Thus, the secession of Bangladesh suggests that the international community is likely to recognize successful secession movements.⁹² However, there is no way to predict in advance which secession efforts will succeed. Therefore, the case of Bangladesh is of little precedential value in predicting which future secessionist groups will be perceived by the international community as having, *a priori*, a right to secede. It is apparent from the foregoing analysis that state practice with respect to Bangladesh, like state practice with respect to Katanga and Biafra, provides no evidence either that a right of secession exists under customary international law or that the response of the international community to secession movements has historically followed any distinguishable pattern.

E. Explanations for the Absence of a Recognized Secession Right

1. *Concerns Over Wilson's Right of Self-Determination.* Continuing anxieties among members of the international community over the potentially disruptive effects of recognizing a secession right based upon the right of self-determination largely explain why no coherent right of secession presently exists under international law. Following World War I, critics voiced concerns over the potentially disruptive consequences of recognizing the doctrine of national self-determination enunciated by United States President Woodrow Wilson.⁹³ During the war, the Allies and the Central Powers had attempted to create discord among minority groups within their opponents' territory through propaganda.⁹⁴ One such overture by the Allied leadership to disaffected minorities was Wilson's advocacy of the doctrine of national self-determination.⁹⁵ Although the exact meaning and applicability of the doctrine have been subject to debate, Wilson viewed the principle of national self-determination as promising every "people" the right to select its own form of government and to be free of "alien masters."⁹⁶ Wilson recognized the potentially destabilizing

92. Cf. *infra* note 153 and accompanying text (the international community supported the secession of the Baltic states only after they had achieved *de facto* independence).

93. See BUCHHEIT, *supra* note 3, at 63-66.

94. *Id.* at 62.

95. *Id.* at 63.

96. MICHLA POMERANCE, SELF-DETERMINATION IN LAW AND PRACTICE 1-2 (1982) (discussing President Wilson's view of self-determination and his ideas concerning the "peoples" to which it would apply).

consequences of an unrestrained right of self-determination and the necessity that its availability be limited.⁹⁷ Wilson's Fourteen Points, which were set forth following World War I, made it clear that the right of self-determination would apply only to the territory of the defeated Central Powers.⁹⁸ Concerns over the destabilizing effects of international recognition of the doctrine of self-determination led to its exclusion from the Covenant of the League of Nations.⁹⁹

2. *The International Focus on Decolonization.* Although a right of self-determination has become a generally recognized principle of international law in the period since World War II, the right has primarily been used to justify decolonization rather than secession.¹⁰⁰ Prior to World War I, the recognition of a right of self-determination under international law appeared unlikely due to concerns that the right would be invoked by the imperial subjects of such powers as Austria-Hungary, Russia, and Great Britain.¹⁰¹ Despite these concerns, the right of self-determination eventually became a recognized norm under international law, in part due to a rising hostility towards colonialism¹⁰² and also due to the express references to self-determination in the United Nations Charter and other United Nations documents.¹⁰³ Since the end of World War II, the principle of self-determination has provided a justification for decolonization.¹⁰⁴ However, the recognition of a right of colonial peoples to seek independence from their parent states under the principle of self-

97. See BUCHHEIT, *supra* note 3, at 115; ALFRED COBBAN, *THE NATION STATE AND NATIONAL SELF-DETERMINATION* 53 (1969).

98. BUCHHEIT, *supra* note 3, at 63 (citing points 9, 10, 12, and 13 from the Fourteen Points as demonstrating how application of the principle of self-determination would transform the postwar boundaries of Europe); see also COBBAN, *supra* note 97, at 66 (interpreting President Wilson's comments as equivalent to an acknowledgement that only peoples in the territories of the defeated Central Powers would have recourse to self-determination).

99. BUCHHEIT, *supra* note 3, at 64, 66; see also COBBAN, *supra* note 97, at 74-84 (examining the "ideals" which were incorporated into the Covenant of the League of Nations "in the place of self-determination").

100. BUCHANAN, *supra* note 6, at 20.

101. See COBBAN, *supra* note 97, at 48.

102. BUCHHEIT, *supra* note 3, at 73.

103. See *supra* notes 17-20 and accompanying text. For a discussion of the existence and evolution of the right of self-determination as an international legal norm, see HEATHER A. WILSON, *INTERNATIONAL LAW AND THE USE OF FORCE BY NATIONAL LIBERATION MOVEMENTS* 55-88 (1988).

104. BUCHHEIT, *supra* note 3, at 16. See generally HANNUM, *supra* note 3, at 49 (stating that self-determination has provided a justification for decolonization, in state practice, since 1960).

determination has not been accompanied by a recognition of a right of groups within existing states to secede.¹⁰⁵

States that have recently achieved independence from colonial powers frequently oppose any secession efforts.¹⁰⁶ It is likely that this opposition stems from concerns that any recognition that secession is legitimate under certain circumstances could encourage secession within the newly independent states as well.¹⁰⁷ Because many of the international borders of the Developing states are left over from the colonial period and were either drawn arbitrarily or based on latitude and longitude lines, numerous disaffected groups within the borders of newly independent states are likely to seek increased autonomy or outright independence based upon tribal, linguistic, or religious differences if a secessionist right of self-determination is recognized.¹⁰⁸ Fears among the Developing states of a deluge of separatist claims have resulted in the espousal of the principle of self-determination as a justification for achieving independence from colonial control, but not as a legitimate basis for seceding from or seeking greater autonomy within an independent postcolonial state.¹⁰⁹

The dichotomy between decolonization and secession under the principle of self-determination cannot be explained solely by the international community's interest in maintaining the status quo. That is, a legal regime favoring the status quo should oppose both decolonization and secession. Rather, the distinction is best explained by the dynamic of states acting in their own self-interest.¹¹⁰ Secession is disfavored by the international community because articulation of a secession right would threaten the territorial integrity of the states which themselves make international law.¹¹¹ In contrast, decolonization is favored by the large number of states in the international

105. BUCHANAN, *supra* note 6, at 20; BUCHHEIT, *supra* note 3, at 16-17; HANNUM, *supra* note 3, at 46.

106. BUCHHEIT, *supra* note 3, at 102.

107. *Id.* at 103.

108. *Id.* This concern explains the strong condemnation of the Biafran secession by the Organisation of African Unity in 1967. See *supra* note 54 and accompanying text; see also Joy Aschenbach, *The Splintering of Africa: New Nations May Emerge as Colonial Boundaries Are Erased*, CHI. TRIB., Jan. 26, 1993, Evening Update, at 8 (discussing the ethnic and linguistic divisions in contemporary Africa stemming from the partitioning of the continent by the European powers in the 1880s).

109. See generally BUCHHEIT, *supra* note 3, at 104 (referring to a desire among Developing states to limit the right of secession).

110. See *id.* at 17.

111. See *id.*

community that were once former colonies or that opposed the colonial powers in furtherance of their own interests.¹¹²

III. RECENT STATE PRACTICE AND THE POSSIBLE EVOLUTION OF STATES' TREATMENT OF SECESSION

The recent success of secession efforts in certain former republics of the Soviet Union, including the Baltic states, as well as the successful secessions of Slovenia, Croatia, and Bosnia-Herzegovina from the former Yugoslavia, contrast with the historic failure of most prior secession efforts.¹¹³ The achievement of independence by these new states can be attributed in part to the international community's willingness to extend recognition to them.¹¹⁴ In light of this, the question arises as to whether the recognition of the Baltic states and the seceding Yugoslav republics marks the beginning of a pattern of conduct evincing the existence of a right of secession under customary international law.¹¹⁵

A. The Baltic States

The support of the majority of states in the international community for the secessions of the Baltic states may represent only the beginning of a pattern of state practice favoring a narrow right of secession applicable to illegally annexed territories rather than acceptance of a general right of secession. The Soviet Union invaded the Baltic states of Lithuania, Estonia, and Latvia in June 1940¹¹⁶ following the conclusion of the Molotov-Ribbentrop Pact, a secret nonaggression agreement and clandestine supplementary protocols with Nazi Germany.¹¹⁷ These agreements divided Eastern Europe

112. See CRISTESCU, *supra* note 20, at 33, para. 232 (describing the motivation of peoples that recently won independence from colonial subjugation to champion the right of self-determination in the decolonization context in order to protect their own gains).

113. The impending secession of Eritrea from Ethiopia soon should provide another example of a successful secession which contrasts with most past efforts. See Jennifer Parmelee, *Eritrea Operating As a Land in Limbo; Nation Awaits Transition to Independence*, WASH. POST, Oct. 13, 1992, at A16.

114. See *supra* note 92 and accompanying text.

115. See *infra* notes 207-19 and accompanying text.

116. JOSEPH I. VIZULIS, *THE MOLOTOV-RIBBENTROP PACT OF 1939: THE BALTIC CASE* 136 (1990).

117. Molotov-Ribbentrop Pact of 1939, Aug. 23, 1939, Germany-U.S.S.R., reprinted in NAZI-SOVIET RELATIONS, 1939-1941, at 76-77 (Raymond J. Sontag & James S. Beddie eds., 1948); Secret Protocol, Aug. 23, 1939, Germany-U.S.S.R., reprinted in VIZULIS, *supra* note 116, at 16-17,

into Nazi and Soviet spheres of influence.¹¹⁸ The Soviet Union officially annexed all three Baltic states after the populations of the three countries were coerced by the Soviets into voting in favor of annexation.¹¹⁹ Prior to this Soviet aggression, each of the Baltic states had enjoyed independent statehood since 1920, and each had been a member of the League of Nations since 1921.¹²⁰ With the exception of a brief period of Nazi occupation during World War II, the Baltic states were *de facto* part of the Soviet Union from the time of annexation up until they achieved independence in 1991.¹²¹ Members of the international community continued to recognize diplomatic representatives of the Baltic states in exile and refused to recognize the validity of their incorporation into the Soviet Union.¹²²

In 1989, the fiftieth anniversary year of the signing of the Molotov-Ribbentrop Pact, opposition to the status of the Baltic states as components of the Soviet Union began to grow within Lithuania, Latvia, and Estonia. On August 22, 1989, the Supreme Soviet of Lithuania declared that the Soviet annexation of Lithuania in 1940 and Lithuania's status as a republic of the Soviet Union were illegal.¹²³ On December 6, 1989, against the backdrop of the impending collapse of communist regimes in Eastern Europe, the Lithuanian Supreme Soviet voted to abolish the Communist Party's political monopoly in Lithuania.¹²⁴ The Congress of People's Deputies of the Soviet Union voted to condemn the Molotov-Ribbentrop Pact in December 1989, marking the first recognition by the Soviet Union of the invalidity of the annexation of the Baltic states.¹²⁵ The Communist Party Con-

125-28 (placing Lithuania within the German sphere of influence); Secret Supplementary Protocol, Sept. 28, 1939, Germany-U.S.S.R., reprinted in VIZULIS, *supra* note 116, at 19 (altering the Molotov-Ribbentrop Secret Protocol to place Lithuania within the Soviet sphere of influence).

118. VIZULIS, *supra* note 116, at 16; Esther B. Fein, *Soviets Confirm Nazi Pacts Dividing Europe*, N.Y. TIMES, Aug. 19, 1989, § 1, at 1.

119. See J. Kajeckas, *The Lithuanian Annexation*, in ANNEXATION OF THE BALTIC STATES 24, 25 (1946).

120. VIZULIS, *supra* note 116, at 135. Each of the Baltic states declared its independence in 1918, but control of the states was not wrested from the Germans and Bolsheviks until 1920. *Id.*

121. Igor Grazin, *The International Recognition of National Rights: The Baltic States' Case*, 66 NOTRE DAME L. REV. 1385, 1402-03, 1405 (1991).

122. VIZULIS, *supra* note 116, at 135-46; Grazin, *supra* note 121, at 1407.

123. Peter Hayes, *Chronology 1989*, 69 FOREIGN AFF. 213, 223 (America and the World 1989/90 issue) [hereinafter *Chronology 1989*]; *A Chain of Freedom*, TIME, Sept. 4, 1989, at 20.

124. *Chronology 1989*, *supra* note 123, at 228; see Esther B. Fein, *A Soviet Warning on Change's Limits*, N.Y. TIMES, Dec. 9, 1989, § 1, at 10.

125. *Chronology 1989*, *supra* note 123, at 229; Esther B. Fein, *Soviet Congress Condemns '39 Pact That Led to Annexation of Baltics*, N.Y. TIMES, Dec. 25, 1989, at A1.

gress of Lithuania voted on December 20, 1989, to declare the Lithuanian Party's independence from Moscow, and the Lithuanian party leader announced the Party's intention to create an independent, democratic Lithuania.¹²⁶ Meanwhile, the Latvian Parliament voted to delete references to the Communist Party's "leading" role from the Latvian republic's constitution on December 28, 1989.¹²⁷ Despite an effort by Soviet President Mikhail Gorbachev to discourage Lithuania's move toward independence in January 1990, the Lithuanian Supreme Soviet declared Lithuania's independence from the Soviet Union on March 11, 1990.¹²⁸

In response to this declaration, Soviet military units adopted a high profile posture in Lithuania during March 1990,¹²⁹ and the Soviet government admonished Lithuania to rescind its declaration of independence¹³⁰ or face an economic embargo.¹³¹ By June 29, 1990, the Lithuanian Supreme Council had voted in favor of placing a moratorium on the Lithuanian declaration of independence, temporarily ending the crisis.¹³² However, the economic embargo on Lithuania did not dissuade Latvian authorities from declaring Latvia's

126. *Chronology 1989*, *supra* note 123, at 229. See generally Esther B. Fein, *The Call of Separatism Rings in Gorbachev's Ear*, N.Y. TIMES, Dec. 31, 1989, § 4, at 3 (discussing Moscow's reaction to the decision of the Lithuanian Communist Party to declare independence from the party leaders in Moscow).

127. *Chronology 1989*, *supra* note 123, at 230; *Latvian Soviet Republic Votes to End Communist Primacy*, N.Y. TIMES, Dec. 29, 1989, at A11.

128. Peter Hayes, *Chronology 1990*, 70 FOREIGN AFF. 206, 214 (America and the World 1990/91 issue) [hereinafter *Chronology 1990*]. See generally Bill Keller, *Parliament in Lithuania, 124-0, Declares Nation Independent*, N.Y. TIMES, Mar. 12, 1990, at A1 (reporting the Lithuanian Parliament's vote and the lack of an immediate Soviet reaction).

129. Specifically, Soviet military units drove through the streets of the capital city Vilnius in armored convoys and seized the Lithuanian Communist Party headquarters there. *Chronology 1990*, *supra* note 128, at 215; Francis X. Clines, *Lithuanian Police Guard Parliament as Pressure Rises*, N.Y. TIMES, Mar. 28, 1990, at A1.

130. On March 31, 1990, Gorbachev broadcast a message to Lithuania warning that "grave consequences" would result if it failed to "immediately annul" its declaration of independence. *Chronology 1990*, *supra* note 128, at 215; Esther B. Fein, *Gorbachev Offers Conditional Talks with Lithuanians*, N.Y. TIMES, Apr. 1, 1990, § 1, at 1.

131. The Soviet government ordered the shutoff of oil and gas pipelines to Lithuania on April 19, 1990, as part of the economic embargo. *Chronology 1990*, *supra* note 128, at 216.

132. Bill Keller, *Lithuania Agrees to 100-Day Delay on Independence*, N.Y. TIMES, June 30, 1990, § 1, at 1. Following the moratorium, the Soviet government lifted the economic and fuel embargo of Lithuania on July 2, 1990. *Chronology 1990*, *supra* note 128, at 218; *Soviets Say Blockade of Lithuania Is Lifted*, N.Y. TIMES, July 3, 1990, at A11.

independence from the Soviet Union on May 4, 1990, after an undefined period of transition.¹³³

Pro-independence activities in the Baltic states continued, and in January 1991, Soviet troops undertook a crackdown in the Baltic republics of Latvia and Lithuania, seizing buildings and clashing with pro-independence demonstrators.¹³⁴ In a nonbinding plebiscite held on February 9, 1991, Lithuanians voted overwhelmingly in favor of secession from the Soviet Union.¹³⁵ In similar plebiscites in Estonia and Latvia on March 3, 1991, over 77 percent of Estonians and over 73 percent of Latvians voted in favor of independence from the Soviet Union.¹³⁶ On March 17, 1991, the Baltic republics, along with Armenia, Georgia, and Moldavia, boycotted a national referendum on preserving the Soviet Union.¹³⁷ An agreement reached between Soviet President Gorbachev and leaders of nine Soviet republics in April 1991 raised the prospect that the Soviet Union would require seceding republics to pay reparations to the Soviet government.¹³⁸

Within two days after the beginning of a coup attempt against Soviet President Gorbachev by hardline, reactionary forces, Estonia and Latvia declared their independence from the Soviet Union on August 20 and August 21, 1991, respectively.¹³⁹ On the latter day, Lithuania reaffirmed its 1990 declaration of independence.¹⁴⁰ International recognition of the Baltic states promptly followed. Russian President Boris Yeltsin, who had previously recognized Lithuania, recognized Estonia and Latvia as independent states three days later, on August 24, 1991.¹⁴¹ The European Community also

133. *Chronology 1990*, *supra* note 128, at 216; Esther B. Fein, *Latvia Lawmakers Move to Dissolve Links with Moscow*, N.Y. TIMES, May 5, 1990, § 1, at 1.

134. Patricia Lee Dorff, *Chronology 1991*, 71 FOREIGN AFF. 184, 195 (America and the World 1991/92 issue) [hereinafter *Chronology 1991*]; Bill Keller, *Soviet Loyalists in Charge After Attack in Lithuania; 13 Dead, Curfew Is Imposed*, N.Y. TIMES, Jan. 14, 1991, at A1.

135. *Chronology 1991*, *supra* note 134, at 196; Francis X. Clines, *Lithuania Votes Overwhelmingly for Independence from Moscow*, N.Y. TIMES, Feb. 10, 1991, § 1, at 1.

136. *Chronology 1991*, *supra* note 134, at 196; Francis X. Clines, *Latvia and Estonia Vote for Sovereignty*, N.Y. TIMES, Mar. 4, 1991, at A3.

137. *Chronology 1991*, *supra* note 134, at 197; Francis X. Clines, *Gorbachev Given a Partial Victory in Voting on Unity*, N.Y. TIMES, Mar. 19, 1991, at A1, A10.

138. This agreement, reached on April 23, 1991, included a revision of the proposed union treaty between the republics to permit secession from the Soviet Union following the payment of hard currency reparations. *Chronology 1991*, *supra* note 134, at 198.

139. *Chronology 1991*, *supra* note 134, at 201; *Lithuanians Clash with Soviet Force*, N.Y. TIMES, Aug. 22, 1991, at A14.

140. *Chronology 1991*, *supra* note 134, at 201.

141. *Id.*; Henry Kamm, *Yeltsin, Repaying a Favor, Formally Recognizes Estonian and Latvian Independence*, N.Y. TIMES, Aug. 25, 1991, § 1, at 17.

recognized the independence of the Baltic states on August 27, 1991,¹⁴² while the United States extended full diplomatic recognition to the Baltic states on September 2, 1991.¹⁴³ By September 6, 1991, the Soviet State Council had announced the Soviet Union's support for membership of the independent, sovereign Baltic states in the United Nations.¹⁴⁴

Before the failed coup attempt in the Soviet Union in August 1991, international manifestations of support for the secessions of the Baltic states were less forthcoming, however. Following the Soviet embargo of oil and gas supplies to Lithuania in April 1990, United States President George Bush postponed the imposition of sanctions on the Soviet Union.¹⁴⁵ On April 26, 1990, the governments of France and West Germany went so far as to request that Lithuania suspend its declaration of independence.¹⁴⁶ It is likely that this hesitancy by some Western governments to support the secessions of the Baltic states in strong terms during the embargo is explained by their desire to help Soviet President Gorbachev, who was perceived as a reformer, to manage the pace of reform in the Soviet Union while preserving his hold on power.¹⁴⁷ In any event, these actions demonstrate that there was no early, unqualified support for the secessions of the Baltic states.

The response of the international community to the crackdown by Soviet troops in the Baltic states in January 1991¹⁴⁸ was somewhat more forceful. Following this crackdown, the European Community suspended \$1 billion in food aid to the Soviet Union, and President Bush called upon the Soviet leadership to resist using force in the Baltic states.¹⁴⁹ The United States also announced on February 6,

142. *Chronology 1991*, *supra* note 134, at 201; Andrew Rosenthal, *A Mosaic of Motives: The West's Response to Baltic Quest for Independence*, N.Y. TIMES, Aug. 28, 1991, at A11.

143. *Chronology 1991*, *supra* note 134, at 201; George Bush, US to Establish Diplomatic Relations with Baltic States, Opening Statement at News Conference in Kennebunkport, Maine (Sept. 2, 1991), in 2 DEP'T ST. DISPATCH 647 (1991).

144. *Chronology 1991*, *supra* note 134, at 201; *Excerpts from Statement on Baltics' Independence*, N.Y. TIMES, Sept. 7, 1991, § 1, at 4.

145. *Chronology 1990*, *supra* note 128, at 216; Andrew Rosenthal, *Bush Delays Action on Lithuania, Not Wanting to Harm Gorbachev*, N.Y. TIMES, Apr. 25, 1990, at A1.

146. *Chronology 1990*, *supra* note 128, at 216; Francis X. Clines, *Moscow Endorses Paris-Bonn Effort in Lithuania Crisis*, N.Y. TIMES, Apr. 29, 1990, § 1, at 1.

147. See Rosenthal, *supra* note 145, at A1, A14.

148. See *supra* note 134 and accompanying text.

149. *Chronology 1991*, *supra* note 134, at 196; *Bush Statement on Lithuania*, N.Y. TIMES, Jan. 14, 1991, at A7; Alan Riding, *Baltic Assaults Lead Europeans to Hold Off Aid*, N.Y. TIMES, Jan. 23, 1991, at A1.

1991, that it would ship \$5 million in emergency medical aid directly to the Baltic republics and the Ukraine.¹⁵⁰ The only outright recognition of the independence of any of the Baltic states prior to August 1991 came from the leadership of "breakaway" republics within the Soviet Union itself. The Soviet republic of Moldavia recognized Lithuania as a sovereign state in May 1990.¹⁵¹ Russian President Boris Yeltsin signed a mutual security pact with representatives of the Baltic states on January 13, 1991, and along with the leaders of the Baltic states, issued a joint appeal for United Nations intervention in the Baltic states to prevent further bloodshed following the Soviet military crackdown.¹⁵²

Although the international community was sympathetic to the cause of independence for the Baltic states prior to and during the events of 1989–1991, there was no outright support for secession in the form of recognition of the sovereignty of the Baltic states until Russian President Boris Yeltsin endorsed Latvian and Estonian independence in August 1991.¹⁵³ The failure of the international community to support the Baltic secession movements more forcefully prior to their *de facto* achievement of success calls into question whether the international response to Baltic independence can be interpreted as the beginning of a pattern of state practice endorsing secession in some contexts. Even if the response of the international community suggests some acceptance of secession, such support may mark only the beginning of international recognition of a limited secession right applicable to illegally annexed territories rather than a general right of secession. In any event, the *ex post facto* recognition of the independence of the Baltic states alone does not establish international recognition of a right of secession under customary international law, even if such recognition may be interpreted as evidence of the beginnings of such a trend.¹⁵⁴

150. *Chronology 1991*, *supra* note 134, at 196; Andrew Rosenthal, *Baltics and Ukraine to Get U.S. Medical Aid*, N.Y. TIMES, Feb. 7, 1991, at A15.

151. *Chronology 1990*, *supra* note 128, at 217; Celestine Bohlen, *Yeltsin Faces a Sharply Split Russian Parliament*, N.Y. TIMES, June 1, 1990, at A12.

152. *Chronology 1991*, *supra* note 134, at 195.

153. *See supra* note 141 and accompanying text. Following the August 1991 failed coup attempt by Soviet hardliners, Yeltsin was widely perceived as the most powerful politician in the Soviet Union. *See, e.g.*, Lee H. Hamilton, *Soviet Changes—The Implications*, CHRISTIAN SCI. MONITOR, Sept. 4, 1991, at 19. Thus, Yeltsin's recognition of the independence of the Baltic states virtually ensured the success of secession efforts there.

154. *Cf. supra* notes 9–13 and accompanying text (stating the general requirements for the establishment of a secession right under customary international law).

B. Yugoslavia

The international response to the events in Yugoslavia may provide the most compelling evidence of a trend in state practice that in time could establish a right of secession under customary international law. The relatively prompt recognition of the former Yugoslav republics of Slovenia, Croatia, and Bosnia-Herzegovina by members of the international community,¹⁵⁵ including the acceptance of the three states as members of the United Nations,¹⁵⁶ is particularly significant because it represents the first time that widespread international state practice has favored secession movements still engaged in armed struggles for independence outside of the colonial context.¹⁵⁷

The ongoing warfare in the territory of the former Yugoslavia¹⁵⁸ stems from tensions among the amalgam of ethnic and religious groups that inhabit the region.¹⁵⁹ Prior to its dissolution in 1992, Yugoslavia was composed of six ethnically diverse republics.¹⁶⁰ These included Slovenia, whose largely homogeneous population is primarily made up of Roman Catholic Slovenes; Croatia, whose population is principally composed of a majority of Roman Catholic Croats and a minority of Eastern Orthodox Serbs; Bosnia-Herzegovina, whose population includes Muslim Bosnians, Croats, and Serbs; Macedonia, whose population is primarily Eastern Orthodox; Montenegro, whose population is also mostly Eastern Orthodox; and Serbia, whose population is primarily composed of a majority of Eastern Orthodox Serbs and a minority of Muslim Albanians.¹⁶¹

155. See *infra* notes 184–87, 203 and accompanying text.

156. See *infra* note 189 and accompanying text.

157. See *infra* note 198 and accompanying text. Slovenia had effectively achieved its independence from Yugoslavia by late June 1990, well before it gained membership in the United Nations. See *Pattern of Evil*, ECONOMIST, May 16, 1992, at 58. However, fighting continued in portions of Croatia that were occupied by the federal army of Yugoslavia and Serb guerrillas, and Bosnia-Herzegovina was facing possible defeat in the secessionist civil war at the time that these latter two former Yugoslav republics gained membership in the United Nations. See *id.*; *Now for Greater Croatia*, ECONOMIST, June 27, 1992, at 61.

158. For a description of the formal dissolution of the former Yugoslavia, see *infra* note 188 and accompanying text.

159. JAMES GOW, LEGITIMACY AND THE MILITARY: THE YUGOSLAV CRISIS 3 (1992).

160. *Id.* at 7.

161. H.C. DARBY ET AL., A SHORT HISTORY OF YUGOSLAVIA FROM EARLY TIMES TO 1966, at 11–12, 239 (1966); BRUCE J. MCFARLANE, YUGOSLAVIA: POLITICS, ECONOMICS, & SOCIETY 2 (1988); FRED SINGLETON, A SHORT HISTORY OF THE YUGOSLAV PEOPLES 209–10 (1985).

The changes that were transpiring among Yugoslavia's communist neighbors in Eastern Europe in late 1989 led to disagreements among the leaders of the Yugoslav republics over the pace and direction of reforms and resurrected separatist tendencies.¹⁶² On September 27, 1989, the Parliament of the Yugoslav republic of Slovenia amended the republic's constitution to give Slovenia a right to secede from Yugoslavia.¹⁶³ The communist leadership of Slovenia "seceded" from Yugoslavia's national Communist Party on February 4, 1990, after hardline Serbian Communists refused to enact further reforms.¹⁶⁴ On July 3, 1990, the Parliament of Slovenia declared Slovenia's sovereignty and stated that its laws took precedence over the laws of the federal government of Yugoslavia.¹⁶⁵ Slovenia's Parliament passed amendments to its constitution on September 28, 1990, claiming that national guard units stationed in Slovenia were under the republic's control.¹⁶⁶ In an emergency meeting on October 1, 1990, the federal government of Yugoslavia declared these amendments to Slovenia's Constitution void.¹⁶⁷

At the same time that Slovenia's leadership was attempting to loosen the republic's ties to the federal government of Yugoslavia, the results from plebiscites in two republics revealed dissatisfaction with existing political arrangements. Serbian communities in southwestern Croatia voted overwhelmingly for greater autonomy during a referendum in August 1990 and nearly 95 percent of voters in Slovenia voted for independence from Yugoslavia on December 22, 1990.¹⁶⁸

Sharp political differences also evolved between the governments of the individual Yugoslav republics during 1990 and early 1991.

162. See GOW, *supra* note 159, at 8-9.

163. *Chronology 1989, supra* note 123, at 224; *Slovenes Assert the Right to Secede, But Say They Won't*, N.Y. TIMES, Sept. 28, 1989, at A10. Following this vote, tens of thousands of demonstrating Serbs in the Serbian city of Novi Sad called for the military takeover of Slovenia by the federal army of Yugoslavia. *Chronology 1989, supra* note 123, at 224.

164. *Chronology 1990, supra* note 128, at 213; *Slovenia Breaks from Yugoslav Communists and Calls for Changes*, N.Y. TIMES, Feb. 5, 1990, at A9. Reforms that were previously agreed upon included the renunciation of the Communist Party's constitutionally mandated "leading role" in Yugoslavian politics in late January 1990. *Chronology 1990, supra* note 128, at 213; Marlise Simons, *Yugoslav Communists Vote to End Party's Monopoly*, N.Y. TIMES, Jan. 23, 1990, at A9.

165. *Chronology 1990, supra* note 128, at 218-19; *Slovenia Defies Belgrade Call to Cancel Sovereignty Move*, N.Y. TIMES, July 8, 1990, § 1, at 6.

166. *Chronology 1990, supra* note 128, at 220; Jim Fish, *2 Yugoslav Republics Get Warning; Presidency Confronts Slovenes, Croatians*, WASH. POST, Oct. 3, 1990, at A27.

167. *Chronology 1990, supra* note 128, at 220; Fish, *supra* note 166, at A27.

168. *Chronology 1990, supra* note 128, at 222; Brenda Fowler, *Slovenes Vote Decisively for Independence from Yugoslavia*, N.Y. TIMES, Dec. 24, 1990, at A6.

Parliamentary elections in Croatia in April 1990 brought noncommunist leaders to power,¹⁶⁹ while Serbian presidential and parliamentary elections in December 1990 resulted in a victory for the hardline Socialist Party, formerly the Serbian Communist Party.¹⁷⁰ Authorities in the Serbian republic were also showing signs of unwillingness to cooperate with the federal government of Yugoslavia, as evidenced by the declaration of the President of the republic on March 16, 1991, that Serbia no longer recognized the federal government as legitimate.¹⁷¹ On March 25, 1991, the federal government sent units of the Serb-dominated federal military into Croatia at the same time as the presidents of the Serbian and Croatian republics were meeting privately to discuss how the dissolution of Yugoslavia could be avoided.¹⁷² The Croatian Parliament unanimously agreed on May 30, 1991, to declare Croatia's independence by June 30 if Croatia and its fellow republics failed to agree upon a new, less centralized Yugoslav confederation arrangement by that time.¹⁷³

The slide into civil war accelerated in the spring of 1991, when violence broke out between Croatian police and Serbs in eastern Croatia.¹⁷⁴ In response to increasing violence, the Yugoslav federal military went on combat alert on June 6, 1991, and began calling up reserves.¹⁷⁵ On June 25, 1991, Slovenia and Croatia declared their "independence" from Yugoslavia but refrained from claiming that they had seceded outright.¹⁷⁶ At the end of June 1991, Slovenia and Croatia agreed to suspend their independence declarations for three months to avert further federal military intervention.¹⁷⁷ By July 2, 1991, a cease-fire negotiated by the European Community in Slovenia had failed, and by July 5, 1991, the European Community had

169. *Chronology 1990, supra* note 128, at 215; *Victory Seen for Nationalists in Yugoslav Republic*, N.Y. TIMES, Apr. 26, 1990, at A13.

170. *Chronology 1990, supra* note 128, at 221; *Former Communists in Serbia Win Majority in Parliamentary Vote*, N.Y. TIMES, Dec. 26, 1990, at A3.

171. *Chronology 1991, supra* note 134, at 197; Blaine Harden, *Republic Rejects Yugoslav Authority; Serbia Shuns Presidency, Mobilizes Forces*, WASH. POST, Mar. 17, 1991, at A29.

172. *Chronology 1991, supra* note 134, at 197; Stephen Engelberg, *Rival Yugoslav Leaders Discussing Fate of Union*, N.Y. TIMES, Mar. 26, 1991, at A5.

173. *Chronology 1991, supra* note 134, at 199; Flora Lewis, *How to Stop a Civil War*, N.Y. TIMES, May 31, 1991, at A31.

174. *Yugoslavia on the Brink*, ECONOMIST, May 11, 1991, at 45.

175. *Chronology 1991, supra* note 134, at 199.

176. *Id.* at 200; Chuck Sudetic, *2 Yugoslav States Vote Independence to Press Demands*, N.Y. TIMES, June 26, 1991, at A1.

177. *Chronology 1991, supra* note 134, at 200; Sudetic, *supra* note 176, at A1.

suspended economic aid and arms sales to Yugoslavia.¹⁷⁸ Fighting continued to escalate, and on August 25–26, 1991, the Yugoslav federal military launched a full-scale military offensive in Croatia, apparently in support of Serb guerrillas.¹⁷⁹ On September 7, 1991, Croatia and Slovenia formally declared their secessions from Yugoslavia.¹⁸⁰

The international community began to respond actively to the events in Yugoslavia in the fall of 1991.¹⁸¹ On November 8, 1991, the European Community imposed economic sanctions against Yugoslavia and argued in favor of an international oil embargo on Yugoslavia in the United Nations Security Council.¹⁸² A few weeks later, on November 27, 1991, the United Nations Security Council passed a resolution providing for the establishment of a United Nations peacekeeping force in Yugoslavia.¹⁸³ In December 1991, the European Community agreed to recognize Croatia and Slovenia as independent states by January 15, 1992.¹⁸⁴ Germany extended formal recognition of Slovenia and Croatia as independent states on December 23, 1991.¹⁸⁵ On December 24, 1991, Bosnia-Herzegovina requested that the United Nations send peacekeeping forces to the former republic.¹⁸⁶ The United States recognized Bosnia-Herzegovina, Croatia, and Slovenia as independent states on April 7, 1992.¹⁸⁷ In

178. *Chronology 1991*, *supra* note 134, at 200; Alan Riding, *European Community Freezes Arms Sales and Aid*, N.Y. TIMES, July 6, 1991, § 1, at 4.

179. *Chronology 1991*, *supra* note 134, at 201; Blaine Harden, *Army Offensive in Croatia Draws European Warnings*, WASH. POST, Aug. 27, 1991, at A1.

180. *Chronology 1991*, *supra* note 134, at 202.

181. For a detailed chronology of the international community's response to recent events in Yugoslavia, see Marc Weller, *The International Response to the Dissolution of the Socialist Federal Republic of Yugoslavia*, 86 AM. J. INT'L L. 569 *passim* (1992).

182. *Chronology 1991*, *supra* note 134, at 203; Alan Riding, *European Nations Declare Sanctions Against Belgrade*, N.Y. TIMES, Nov. 9, 1991, § 1, at 1, 6.

183. S.C. Res. 721, U.N. SCOR, 46th Sess., 3018th mtg. at 2, U.N. Doc. S/RES/721 (1991). For a discussion of the expansion of the role of United Nations forces in Yugoslavia, see *infra* note 205 and accompanying text.

184. *Chronology 1991*, *supra* note 134, at 205; John Tagliabue, *European Ties for Slovenia and Croatia*, N.Y. TIMES, Dec. 17, 1991, at A3.

185. *Chronology 1991*, *supra* note 134, at 205; Stephen Kinzer, *Slovenia and Croatia Get Bonn's Nod*, N.Y. TIMES, Dec. 24, 1991, at A3.

186. *Chronology 1991*, *supra* note 134, at 205; Kinzer, *supra* note 185, at A3.

187. *Chronology: Developments Related to the Crisis in Bosnia, March 10-September 22, 1992*, 3 DEP'T ST. DISPATCH, Supp. No. 7, Sept. 1992, at 15 [hereinafter *Chronology 1992*]. The initial response of the United States to the announcement of secession by Croatia in June 1991 was negative. On June 27, 1991, White House spokesperson Marlin Fitzwater stated that "[l]ooking at the processes that are established for peaceful resolution as opposed to arbitrary secession and the use of force that [secession] can result in, it is simply our belief that the Yugoslav people would be best served by a country that's unified." *U.S. on Secession: Maybe*,

contrast, the United States refused to extend diplomatic recognition to the newly proclaimed "Federal Republic of Yugoslavia," which was formed by Serbia and Montenegro on April 27, 1992, following the dissolution of the Socialist Federated Republic of Yugoslavia.¹⁸⁸ Bosnia-Herzegovina, Croatia, and Slovenia became members of the United Nations on May 22, 1992.¹⁸⁹ On May 30, 1992, the United Nations Security Council adopted Resolution 757, which imposed broad sanctions and a trade embargo on Serbia-Montenegro.¹⁹⁰ The European Community refused to recognize Serbia-Montenegro as the successor state to Yugoslavia in a declaration on June 27, 1992.¹⁹¹ In addition, the United Nations General Assembly voted to adopt United Nations Security Council Resolution 777¹⁹² of September 19, 1992, denying the claim of the Federal Republic of Yugoslavia (Serbia and Montenegro) to the United Nations seat occupied by the former Yugoslavia.¹⁹³

The broad international dissatisfaction with Serbia-Montenegro is based in large part upon the efforts by the Serb-dominated remnants of the Yugoslav federal military and Serb guerrillas to increase the amount of territory under Serbian control through a campaign of "ethnic cleansing."¹⁹⁴ These efforts are characterized by attempts to

N.Y. TIMES, June 28, 1991, at A8.

188. *Chronology 1992*, *supra* note 187, at 15; John F. Burns, *Confirming Split, Last Two Republics Proclaim a Small New Yugoslavia*, N.Y. TIMES, Apr. 28, 1992, at A1. Another former Yugoslav republic, Macedonia, is not yet a United Nations member and has not been widely recognized by members of the international community. Paul Lewis, *New Balkans Unit Prepared by U.N.*, N.Y. TIMES, Nov. 26, 1992, at A6. This is despite the fact that as early as September 1991, a majority of voters in Macedonia voted in favor of independence from Yugoslavia. *Chronology 1991*, *supra* note 134, at 202; John Tagliabue, *Macedonians Vote for Independence from Yugoslavia*, N.Y. TIMES, Sept. 10, 1991, at A1. The government of Greece has persuaded many states not to recognize Macedonia until it changes its name, charging that calling the territory "Macedonia" implies that the new state has territorial designs on the Greek province of the same name. Lewis, *supra*, at A6.

189. *Chronology 1992*, *supra* note 187, at 15; *3 Ex-Yugoslav Republics Are Accepted into U.N.*, N.Y. TIMES, May 23, 1992, § 1, at 4.

190. S.C. Res. 757, 47th Sess., 3082d mtg. at 3-5, U.N. Doc. S/RES/757 (1992) (mimeographed document; U.N. SCOR volume forthcoming).

191. *Chronology 1992*, *supra* note 187, at 15.

192. S.C. Res. 777, 47th Sess., 3082d mtg. at 3-5, U.N. Doc. S/RES/777 (1992) (mimeographed document; U.N. SCOR volume forthcoming).

193. G.A. Res. 47/1, 47th Sess., Agenda Item 8, at 1, U.N. Doc. A/RES/47/1 (1992) (mimeographed document; U.N. GAOR volume forthcoming).

194. See *Ethnic Cleansing: The Law of the Strong*, ECONOMIST, Aug. 22, 1992, at 35. On December 17, 1991, Serbia expressed its intention to "recognize" areas of Croatia and Bosnia-Herzegovina inhabited by Serbs, manifesting a Serbian intention to effectively annex such territories. *Chronology 1991*, *supra* note 134, at 205.

drive all non-Serbs out of territories in Croatia and Bosnia-Herzegovina populated by Serbs and/or contiguous to the territory of the former Yugoslav republic of Serbia.¹⁹⁵ In a resolution passed on May 15, 1992, the United Nations Security Council called upon all parties concerned "to ensure that forcible expulsions of persons from the areas where they live and any attempts to change the ethnic composition of the population, anywhere in the former . . . Yugoslavia, cease immediately. . . ."¹⁹⁶ The United Nations Security Council subsequently condemned Serbia-Montenegro for failing to fulfill the requirements of this resolution in a subsequent resolution passed on May 30, 1992.¹⁹⁷ Taken together, these resolutions constitute a condemnation by the world community of the practice of ethnic cleansing by Serbia-Montenegro. Serbian atrocities, including continued adherence to the policy of ethnic cleansing, may best explain why the international community has refused to recognize Serbia-Montenegro as the successor state to the former Yugoslavia. The actions of Serbia may also explain the relatively swift recognition of Bosnia-Herzegovina, Croatia, and Slovenia by key members of the international community shortly after their secessions.

Despite the fact that the prompt recognition of the secessions of Bosnia-Herzegovina, Croatia, and Slovenia occurred against the backdrop of Serbian violations of international law, the support by the international community for the secessions is significant because it represents the first time that widespread recognition of new states still fighting for independence has taken place outside of the colonial context.¹⁹⁸ Furthermore, the recognition of Bosnia-Herzegovina, Croatia, and Slovenia by the United States,¹⁹⁹ and German recognition of Slovenia and Croatia,²⁰⁰ occurred prior to the formal dissolu-

195. See *Yugoslavia's Refugees: The Tide of Misery*, ECONOMIST, May 23, 1992, at 53.

196. S.C. Res. 752, 47th Sess., 3075th mtg. at 2, para. 6, U.N. Doc. S/RES/752 (1992) (mimeographed document; U.N. SCOR volume forthcoming). In a subsequent resolution, the United Nations Security Council expressed "grave alarm" at "reports of mass killings and the continuance of the practice of 'ethnic cleansing'" in Bosnia-Herzegovina. S.C. Res. 780, 47th Sess., 3119th mtg. at 1, U.N. Doc. S/RES/780 (1992) (mimeographed document; U.N. SCOR volume forthcoming).

197. S.C. Res. 757, 47th Sess., 3082d mtg. at 3, U.N. Doc. S/RES/757 (1992) (mimeographed document; U.N. SCOR volume forthcoming).

198. See Weller, *supra* note 181, at 605-06 (arguing that before international recognition was extended to the former Yugoslav republics, the hope among members of the international community that a precedent in favor of secession outside of the colonial context could be avoided had to be overcome).

199. See *supra* note 187 and accompanying text.

200. See *supra* note 185 and accompanying text.

tion of Yugoslavia on April 27, 1992.²⁰¹ The former Yugoslavia was thus still legally in existence, both at the time the secession efforts were announced and at the time the seceding republics were recognized by key members of the international community. It appears that recognition of the former Yugoslav republics by the United States and Germany involved the recognition of *seceding* states rather than the recognition of the former components of a dismembered state.²⁰² Absent this distinction, it would be tempting to characterize the secessions of the former Yugoslav republics as examples of international accession to state dissolution rather than secession.

The willingness of the international community to recognize the secessions of Bosnia-Herzegovina, Croatia, and Slovenia so quickly contrasts with prior state practice as outlined above.²⁰³ Particularly illustrative of this contrast in state practice is the decision of the United States to recognize the independence of Bosnia-Herzegovina on April 7, 1992, less than four months after Bosnia-Herzegovina undertook its secession effort.²⁰⁴ The breadth of the involvement of the United Nations in the events in Yugoslavia, including the expanding role of the United Nations peacekeeping forces deployed there,²⁰⁵ may signal an increasing willingness on the part of the United Nations and the international community to become actively involved in opposing the violent oppression of some secession movements and contrasts sharply with United Nations inaction during

201. See *supra* note 188 and accompanying text.

202. In contrast, the peaceful breakup of Czechoslovakia into the Czech Republic and Slovakia on December 31, 1992, was a case of state dissolution in which a former state dissolved into multiple, newly independent successor components. See Stephen Engelberg, *Czechoslovakia Breaks in Two, To Wide Regret*, N.Y. TIMES, Jan. 1, 1993, at A1; *Check, O Slovakia*, ECONOMIST, June 27, 1992, at 55.

203. See *supra* notes 24-92 and accompanying text.

204. See *supra* note 187 and accompanying text.

205. In a resolution passed on October 6, 1992, the United Nations Security Council authorized United Nations peacekeeping forces to monitor the complete withdrawal of the "Yugoslav army" from Croatia, the demilitarization of certain areas of the former Yugoslavia, and the removal of heavy weapons from parts of Croatia and Montenegro. S.C. Res. 779, 47th Sess., 3118th mtg. at 2, U.N. Doc. S/RES/779 (1992) (mimeographed document; U.N. SCOR volume forthcoming). Since September 1992, United Nations peacekeeping forces have assumed an increasingly aggressive posture in escorting relief supply convoys to towns in Bosnia-Herzegovina. See Paul Lewis, *No Peace for the U.N.; As Its Operations Around the World Falter, An Angry Council Takes a Tougher Stand*, N.Y. TIMES, Nov. 29, 1992, § 1, at 1, 16. The United Nations Security Council also authorized a naval blockade of Serbia-Montenegro in November 1992. Alan Cowell, *NATO and European Warships Blockade Yugoslavia*, N.Y. TIMES, Nov. 21, 1992, § 1, at 3. United Nations forces in the former Yugoslavia numbered more than 22,000 in late February 1993. *Air Drop on Bosnia*, ECONOMIST, Feb. 27, 1993, at 16.

the Biafran secession effort.²⁰⁶ Based upon this analysis, the response of the international community to the events in Yugoslavia may mark the beginning of a pattern of state practice with respect to secession movements that in time could establish a right of secession under customary international law.

C. The International Legal Significance of Recent State Practice

1. *A Secession Right Has Not Developed From State Practice.* Recent state practice in response to secession movements has not created a secession right under customary international law. As previously discussed, the international community's broad support for the secessions of the Baltic states from the Soviet Union and the speedy recognition of several seceding former Yugoslav republics may mark the beginning of a pattern of state practice that could in time reveal a right of secession under international law.²⁰⁷ However, these developments are recent and are not widespread. Thus, the necessary conditions that the practice either be repeated over a considerable time period or be sufficiently widespread to create customary international law are not fulfilled in the secession context.²⁰⁸

Historically, few states have shown a willingness to go to war on behalf of secessionists in other states, with Indian intervention in Bangladesh being a notable exception.²⁰⁹ Even less intrusive interference on behalf of secessionists is seldom provided to the extent or for the period necessary to produce success for the separatists.²¹⁰ Furthermore, existing states facing secession movements may be able to negotiate with other states or otherwise convince them not to assist the separatists.²¹¹ As a result, few secession movements prior to the achievement of independence by the Baltic states in 1991 have

206. See *supra* notes 52–53 and accompanying text.

207. See *supra* notes 113–206 and accompanying text.

208. Cf. *supra* notes 9–13 and accompanying text (discussing criteria necessary for a right of secession to exist under customary international law).

209. HOROWITZ, *supra* note 43, at 276.

210. See *id.* at 275.

211. *Id.* at 273, 275. For example, Thailand was successful in securing Malaysia's forbearance from assisting an attempted secession by Muslim separatists of Malay ethnicity by cooperating with Malaysia in suppressing communist guerrillas. *Id.* at 275. In contrast, secessionist movements are generally less able to offer a *quid pro quo* in return for international assistance. See generally *id.* at 273, 275 (describing the ability of states to offer inducements to other states not to assist secessionists and implying that separatists are less able to offer such inducements).

succeeded, thus providing few precedents from which to infer the existence of a secession right based upon state practice.

Whatever precedent exists regarding the emergence of a pattern of customary state practice recognizing a secession right may be illusory. In the absence of an established right of secession, the responses of individual states to particular secession efforts have historically been based upon the states' own political interests.²¹² States that stand to benefit from a successful secession by weakening a rival or creating a potential new ally in the newly independent territory are prone to take a more permissive view toward particular secession efforts.²¹³ Such states will likely oppose similar secession efforts in areas outside of their spheres of influence that could be used as precedents for potential separatist claims within those states' own borders.²¹⁴ The case examples discussed above illustrate this pattern. China's rivalry with the Soviet Union in the early 1970s led the Chinese government to criticize India, a Soviet ally, for its military support of the Bangladeshi effort to secede from Pakistan.²¹⁵ The Soviet opposition to the attempted secession of Katanga from the Congo in 1961 reflected the Soviet government's desire to extend its influence in Africa while weakening the positions of the Western colonial powers.²¹⁶ The United States opposed the secession efforts in Katanga, Biafra, and Bangladesh.²¹⁷ It could be argued that this opposition reflected consistent American adherence to the principle that there is no right of secession under international law. However, it is possible that political self-interest best explains the American position with respect to these secessions. Even the United States' support for the secessions of the Baltic states²¹⁸ and its quick recognition of seceding Yugoslav republics may be explained in part by its own political interests in loosening the influence of its former communist rivals and avoiding ethnic conflicts in Eastern Europe.²¹⁹

212. See BUCHHEIT, *supra* note 3, at 105.

213. *Id.*

214. *Id.*

215. *Id.* at 208.

216. YOUNG, *supra* note 42, at 309.

217. BUCHHEIT, *supra* note 3, at 118-19.

218. Recall that the United States did not offer unqualified support for the secession efforts in the Baltic states until August 1991. See *supra* notes 143, 145 and accompanying text.

219. See, e.g., George D. Moffett, III, *Struggles Grow for "Self-Determination,"* CHRISTIAN SCI. MONITOR, Oct. 21, 1992, at 1 (attributing the support of the United States for "self-determination" in the Baltic states to the policy goal of "combatting Soviet expansionism"); Thomas L. Friedman, *War in Yugoslavia Feared by Baker*, N.Y. TIMES, July 4, 1991, at A7

Regardless of whether states often formulate their approaches to individual secession efforts based wholly upon their own political interests, recent state practice has not established a right of secession under international law.

2. *Other Possible Sources for a Right of Secession Under International Law.* In addition to the absence of state practice establishing the existence of a secession right under international law, it does not appear that there is sufficient evidence of a right of secession under existing international agreements or declarations of multinational organizations. There are no international conventions or treaties that attempt to establish acceptance of a general right of secession among their signatories.²²⁰ Furthermore, there is no consensus among scholars as to whether a right of secession exists in any form under international law.²²¹ Finally, the resolutions and declarations of international organizations, which also do not create international law,²²² do not support the existence of a right of

(suggesting that the policy of the United States toward Yugoslavia in July 1991 was primarily directed at avoiding a civil war in the Balkans rather than maintaining a consistent opposition to Yugoslavia's dissolution).

220. See generally BUCHHEIT, *supra* note 3, *passim* (containing no mention of such conventions or treaties despite offering a complete discussion of international instruments dealing with self-determination and secession); HANNUM, *supra* note 3, at 27-49 (discussing international instruments pertaining to self-determination, with no mention of conventions or treaties dealing with secession). Even if the majority of scholarly juristic opinion appeared to support the existence of such a right, such opinions alone do not create international law. *Queen v. Keyn*, 2 Ex. D. 63, 202-04 (Cr. Cas. Res. 1876). Although they are sometimes treated as authoritative in practice, the opinions of scholars generally are viewed as merely providing evidence of existing general principles of international law or international legal custom. See, e.g., *The Paquete Habana*, 175 U.S. 677, 686-712 (1900) (weighing the work of commentators in assessing whether they reflect the state of customary international law). Recognition of the judgments of a foreign tribunal is a matter of comity and not an absolute obligation. *Hilton v. Guyot*, 159 U.S. 113, 163-64, 214 (1895); see also RESTATEMENT OF FOREIGN RELATIONS, *supra* note 10, § 103 (characterizing judicial decisions and scholarly juristic opinion as evidence of whether a rule of international law exists). Because judicial decisions in international law are binding only upon parties to a particular dispute, judicial decisions alone cannot "create" positive international law. See RESTATEMENT OF FOREIGN RELATIONS, *supra* note 10, § 103; WILLIAM W. BISHOP, JR., INTERNATIONAL LAW: CASES AND MATERIALS 39 (3d ed. 1971). The absence of a doctrine of *stare decisis* in international law makes judicial decisions poor precedents for attempting to create "new" international law such as a secession right. BISHOP, *supra* at 39.

221. BUCHHEIT, *supra* note 3, at 127.

222. Individual declarations of multinational organizations are legally nonbinding and only provide evidence of prevailing state practice. See Schachter, *International Law in Theory and Practice*, 178 ACAD. DE DROIT INT'L RECUEIL DES COURS 114-21 (1982-V), reprinted in LOUIS HENKIN ET AL., INTERNATIONAL LAW: CASES AND MATERIALS 127-32 (2d ed. 1987) ("[I]t must . . . be acknowledged that a resolution by the overwhelming majority of States declaring or

secession.²²³ As previously discussed, certain international organs have expressly found that there is no secession right under international law.²²⁴

3. *How a Secession Right Might Become Part of International Law.* It is difficult to predict for how long and in how many instances the international community must recognize and support secession movements before a general right of secession would be deemed to exist under customary international law. However, as the foregoing historical analysis makes clear, even if the international community's prompt recognition of the seceding Yugoslav republics marks the beginning of a new, more permissive approach to secession in state practice, the recognition of a right of secession based upon state practice and international custom is not imminent.

In theory, multilateral treaties and conventions offer a possible means for attempting to create a coordinated international approach to secession. However, treaties and conventions can take years to come into force, are only binding upon their signatories for as long as the parties remain signatories, and do not create new international legal principles.²²⁵ Nevertheless, the conclusion of a multilateral convention setting forth the circumstances under which its signatories recognize the appropriateness of secession and the duties of third parties toward both sides in secession struggles could advance the development of a comprehensible approach to secession at the international level.²²⁶ It is unclear, however, that such a development will take place.

United Nations General Assembly declarations, such as the Declaration on Friendly Relations,²²⁷ purport to express existing

confirming a principle of law is almost always of significant evidential value. True, its ultimate acceptance as law will depend on the behavior of the States and on their expectations of future conduct." *Id.* at 132.

223. See *supra* notes 14-22, 36-38, 54 and accompanying text.

224. See *supra* notes 2, 14-16, 54 and accompanying text.

225. See 1 GREEN H. HACKWORTH, DIGEST OF INTERNATIONAL LAW 17 (1940); see also RESTATEMENT OF FOREIGN RELATIONS, *supra* note 10, § 102(3) ("International agreements create law for the states parties thereto and may lead to the creation of customary international law when such agreements are intended for adherence by states generally and are in fact widely accepted."). However, Hackworth also states that "provisions of a convention that are declaratory of international law do not lose their binding effect by reason of the abrogation of or withdrawal from the convention by parties thereto, because they . . . exist as a part of the body of the common law of nations." HACKWORTH, *supra*, at 17.

226. See *supra* note 225.

227. See *supra* note 20 and accompanying text.

principles of international law. A General Assembly declaration or resolution concerning secession could arguably hasten the establishment of a secession right under customary international law by providing evidence of the collective opinion of the international community on secession.²²⁸ Again, such a prospect does not appear imminent. Waiting for a secession right to become part of customary international law through repeated state practice is the other main alternative.²²⁹ This may be the most likely means through which a secession right would come to be recognized, but the process could take many years and could yield a secession right of uncertain applicability in specific contexts, fraught with ambiguities similar to those associated with the right of self-determination as it now exists.²³⁰

A normative approach asks whether a secession right *ought* to be incorporated into international law. In assessing whether a secession right belongs within the international legal framework, it is useful to consider what form a right of secession might take and what the resulting imperatives imposed by the right upon third parties ought to be.

IV. NORMATIVE ARGUMENTS: THE APPROPRIATE TREATMENT OF SECESSION UNDER INTERNATIONAL LAW

A. Limits On the Right to Secede: Some Arguments

Various legal scholars and moral philosophers have offered competing visions of what limits should properly be placed upon a right of secession. Lea Brilmayer argues that secession is usually justified when a group of people has a territorial claim based upon a historical grievance.²³¹ In determining which claims are legitimate,

228. See BUCHHEIT, *supra* note 3, at 244–45 (discussing the possible advantages of a United Nations instrument declaring the standards for valid secession movements); *supra* note 222 and accompanying text.

229. Another alternative for securing a right to secede to fixed groups of persons short of recognition of a general secession right under international law is through a constitutional arrangement which permits an express right of secession. The constitution of the Soviet Union contained such a provision. U.S.S.R. CONST. art. 72, *reprinted in* 18 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 31 (Albert P. Blaustein & Gisbert H. Flanz eds., 1992) (“Each Union Republic shall retain the right freely to secede from the U.S.S.R.”). For a more detailed discussion of secession pursuant to constitutional design, see BUCHANAN, *supra* note 6, at 127–49.

230. See BUCHANAN, *supra* note 6, at 50.

231. Brilmayer, *supra* note 6, at 189–91, 193.

Brilmayer argues that the immediacy of the historical grievance, the degree to which a people has kept its claim alive, the extent to which the territory has been settled by the dominant group, and the nature of the historical grievance should all be considered.²³² Such a construct would permit a territory such as Lithuania to secede because it was unjustly annexed in 1940, has maintained a sense of national identity, and has kept its claim alive.²³³ Furthermore, Brilmayer's approach considers the reasonable expectations of a territory's population in determining whether a historical grievance has been kept alive.²³⁴ The inclusion of this consideration could inject considerable uncertainty into certain secession claims. For example, in Latvia, non-Latvian (primarily Russian) settlers nearly outnumbered Latvians at the time of secession.²³⁵ Honoring the expectations of the majority of the population of Latvia generations after the grievance arose could conceivably have resulted in the denial of the legitimacy of the Latvian secession.

The advantage of Brilmayer's argument is that it vests states such as Lithuania, which are widely viewed as deserving independence, with a right to secede. The attendant disadvantage is the difficulty or impossibility of designating stopping points on the slippery slope of historical claims because there is no clear way to establish how long a historical claim remains valid.²³⁶ Because nearly all territory was once in the control of other ethnic or national groups,²³⁷ permitting those groups which formerly enjoyed autonomy in a particular territory to secede would likely increase ethnic conflicts and thus have a destabilizing effect on domestic politics in multiethnic states. This concern is limited somewhat by the fact that historical grievances which arose prior to World War I appear to have expired, because international law prior to 1914 generally permitted states to obtain territory through conquest.²³⁸ In spite of these criticisms, Brilmayer's

232. *Id.* at 199-201.

233. *See generally id.* at 189-90 (describing the Baltic states as providing "an excellent example" of a historical grievance and subsequent secessionist demands).

234. *See id.* at 199-200 (discussing "the extent to which [a] territory has now been settled by members of the dominant group" as a factor to be considered in determining whether the status quo is "settled enough" to preclude valid secession claims).

235. At the time of its secession from the Soviet Union, only 52 percent of the population of Latvia was Latvian. Martha B. Olcott, *The Lithuanian Crisis*, 69 FOREIGN AFF., Summer 1990, at 30, 43.

236. *See* Grazin, *supra* note 121, at 1403.

237. *See* Brilmayer, *supra* note 6, at 199.

238. IAN BROWNLIE, INTERNATIONAL LAW AND THE USE OF FORCE BY STATES 20 (1963).

argument is sound to the extent that groups in unlawfully annexed territories should not automatically be denied the right to secede from the annexing state and regain their former sovereignty solely because of the consequentialist argument that every territory once was controlled by another group. The most serious problem with Brilmayer's model for a right of secession is that it applies to too few circumstances.

Allen E. Buchanan agrees with Brilmayer's argument that every legitimate secession movement must include a valid territorial claim,²³⁹ and that the right of secession can validly be invoked to rectify past injustices.²⁴⁰ However, Buchanan presents a much more expansive model of the right of secession than Brilmayer. Buchanan argues that the right of secession should be available to preserve the culture of a seceding group,²⁴¹ to combat "discriminatory redistribution,"²⁴² and for self-defense²⁴³ even where no "historical grievance," as defined by Brilmayer, exists. Buchanan defines "discriminatory redistribution" as the morally arbitrary economic exploitation of one group to benefit others.²⁴⁴ In addition to injustice in the form of discriminatory redistribution, Buchanan argues that a right of secession exists when a state perpetuates serious injustices upon a group.²⁴⁵ However, he also argues that the seceding group may be required to compensate the parent state for economic losses that the state will suffer from the taking of its territory, depending upon the surrounding circumstances.²⁴⁶ Buchanan also recognizes the right of groups to secede in "self-defense," meaning "the necessity of a group's defending itself against threats to the literal survival of its members by third-party aggressors when the group's own state is not protecting it."²⁴⁷ Finally, Buchanan argues that groups may validly invoke the right of secession in order to preserve their cultures in certain limited circumstances. In order to secede for the purpose of protecting a culture, Buchanan argues that the culture must be genuinely in danger of being destroyed in the near future, less drastic domestic means of

239. BUCHANAN, *supra* note 6, at 22–23 n.5.

240. *See id.* at 67–68.

241. *Id.* at 52–64.

242. *Id.* at 38–45.

243. *Id.* at 64–67.

244. *Id.* at 40.

245. *Id.* at 152.

246. For a further discussion of the circumstances under which such compensation might be necessary, *see id.* at 104–14.

247. *Id.* at 153.

cultural preservation must be unavailable or inadequate, the culture must meet minimal standards of moral decency and may not be seeking to establish a state that will violate basic human rights or deny freedom of egress for its citizens, and neither the parent state nor any third party can have a valid claim to the seceding territory.²⁴⁸ In contrast to Brilmayer's overly limited approach to secession, Buchanan's approach may go too far by recognizing the validity of secessionist claims based upon economic grievances and cultural differences that almost any group with separatist tendencies might be tempted to invoke.²⁴⁹ Furthermore, the argument that oppressed groups should be required to compensate the parent state for economic losses resulting from the loss of territory and resources appears unworkable in practice.

An even broader approach to the establishment of a right of secession than the frameworks presented by Brilmayer and Buchanan uses the right of self-determination to argue that every group is entitled to its own state.²⁵⁰ Harry Beran argues that because consent of the governed is a necessary condition for political obligations to exist, any group that has not given its consent has a right to secede when "morally and practically possible."²⁵¹ This third approach interprets the right of self-determination endorsed in several United Nations documents²⁵² as proclaiming a broad secession right for every group.²⁵³ This approach is appealing because it treats the right of self-determination of colonial peoples and seceding peoples equivalently. As Lee C. Buchheit writes:

248. *Id.* at 153. For a more detailed discussion of the right of secession to preserve a culture, see *id.* at 52-64.

249. For example, Buchanan suggests that the "American Southern secession" might have been justified under his theory of discriminatory redistribution but for the fact that the South was fighting to preserve slavery. *Id.* at 157-58. Buchanan himself states that "discriminatory redistribution, whether that label is used or not, is almost always one of the chief complaints of secessionists in the real world." *Id.* at 152-53. This suggests that recognizing discriminatory redistribution as a valid basis for secession would lead to the assertion of a host of new separatist claims.

250. *Id.* at 48.

251. HARRY BERAN, *THE CONSENT THEORY OF POLITICAL OBLIGATION* 37-42 (1987). *But cf.* Brilmayer, *supra* note 6, at 185 (arguing that consent requires only a right to participate within the existing political unit through an electoral or other parliamentary process rather than the right to opt out of the polity).

252. See *supra* notes 17-20 and accompanying text.

253. BUCHANAN, *supra* note 6, at 48.

One searches in vain . . . for any principled justification of why a colonial people wishing to cast off the domination of its governors has every moral and legal right to do so, but a manifestly distinguishable minority which happens to find itself, pursuant to a paragraph in some medieval territorial settlement or through a fiat of the cartographers, annexed to an independent State must forever remain without the scope of the principle of self-determination.²⁵⁴

However, Buchheit acknowledges that the distinction between self-determination as applied to colonial peoples and seceding peoples can be explained by the political interests of the international community.²⁵⁵ The large number of culturally, ethnically, politically, and religiously distinct societies in the world means that if the right of self-determination were interpreted to permit every distinct "people" to secede, the result would be an enormous number of new states.²⁵⁶ In practice, achieving complete homogeneity of peoples within each political territory is impractical both because of its economic costs and the likelihood that the killing or expulsion of ethnically nonhomogeneous people would be necessary to achieve this end.²⁵⁷ The "ethnic cleansing" currently being undertaken by Serbia reifies this concern.²⁵⁸ A broadly tailored right of secessionist self-determination would permit "peoples" constituting majorities within states to secede, leaving minority ethnic groups "encapsulated" within the secessionist states with no recourse to secession themselves.²⁵⁹ It appears that recognizing an unrestricted right of secessionist self-determination akin to the corresponding right of self-determination of colonial peoples is impracticable.²⁶⁰ Drafting a narrowly tailored secession right appears necessary if it is to have a fair chance of being widely recognized by states.

254. BUCHHEIT, *supra* note 3, at 17.

255. *Id.*

256. ERNEST GELLNER, *NATIONS AND NATIONALISM* 2 (1983).

257. *Id.*

258. See *supra* notes 194–97 and accompanying text.

259. See Horowitz, *supra* note 68, at 37.

260. In spite of the broad endorsement of the principle of self-determination in the documents of the United Nations, there is no clear indication that the drafters of these documents intended to create a right of secessionist self-determination. See *supra* notes 21–23 and accompanying text.

B. Secession and State Practice: Unsettled Issues and Some Starting Points for Resolution

There are several matters upon which states must find common ground before any secession right can develop from customary state practice. Among these unresolved issues are the relationship of secession to sovereignty, the responsibilities of states once a secession effort is underway, the questions of which groups can secede and what territories they can take with them, the related problem of the encapsulation of minority groups within seceding territories, and the relationship of secession to self-determination. Several problems associated with these issues as well as some possible starting points for resolving them are considered below.

1. *Secession and Sovereignty.* Because secession poses a direct challenge to the territorial integrity and sovereign authority of states, state governments are understandably reluctant to recognize a right of secession.²⁶¹ An attempt could be made to allay such concerns by requiring that a strong presumption in favor of the sovereignty of an existing, or "undivided" state²⁶² be overcome before secession would be permitted. By favoring the status quo, this presumption would reduce the potential number of valid secession claims, thereby reducing the threat to international order that recognition of a secession right might otherwise produce.²⁶³ In addition, this construct respects the sovereignty of states, which is a fundamental tenet of international law.²⁶⁴

2. *Responsibilities of States Once a Secession Effort Is Underway.* Perhaps the most important aspect of recognition of a right of

261. See *supra* note 111 and accompanying text.

262. The term "undivided state" is borrowed from Donald L. Horowitz. See Horowitz, *supra* note 68, at 17.

263. Joseph S. Nye, Jr. has written that "a policy of unqualified support for national self-determination would turn into a principle of enormous world disorder." See Joseph S. Nye, Jr., *What New World Order?*, 71 FOREIGN AFF., Spring 1992, at 91; see also Brilmayer, *supra* note 6, at 183 ("Proponents of secession . . . face a very slippery slope in formulating a right to secede that does not open the door to complete anarchy.").

264. See, e.g., ALAN JAMES, SOVEREIGN STATEHOOD: THE BASIS OF INTERNATIONAL SOCIETY 200 (1986) ("The most basic of these powers is the right of the state to exercise jurisdiction within its borders and to take [*sic*] its own decisions regarding its internal or external affairs. Indeed, this is quite often referred to as the right of sovereignty."); see also Ruth Lapidot, *Sovereignty in Transition*, 45 J. INT'L AFF. 325, 329-31 (1992) (discussing the international legal implications of state sovereignty).

secession in any form at the international level is the responsibility such a right would impose upon third parties, including states and international organizations. International relations, and particularly intervention by third parties in its various forms, play a key role in determining the outcome of secession movements and in explaining why so few are successful.²⁶⁵ While recognizing a right of secession in certain circumstances may serve to encourage secession movements, it is the moral and legal imperatives that such a right imposes upon potential third-party intervenors that will determine how likely the right is to translate into success for secessionists.²⁶⁶

In 1963, Ian Brownlie described the status of international law with respect to intervention by third parties in civil wars as featuring "diverse and contradictory trends in the practice of states."²⁶⁷ Nevertheless, Brownlie concluded that based upon state practice, aid can lawfully be given by third parties to governments engaged in civil wars or to counter foreign assistance given to insurgents.²⁶⁸ More recent state practice appears to have moved toward permitting increased third-party assistance during civil wars.²⁶⁹ However, there is some disagreement among scholars as to whether military intervention by third parties at the invitation of existing states seeking to quell insurrections is permitted under international law.²⁷⁰ In light of this uncertainty, it is desirable to clarify the responsibilities of third parties when states are facing secession movements.

Michael Walzer argues that there should be certain moral and legally binding criteria that must be satisfied before a third-party state is justified in intervening in the affairs of a state involved in a secessionist struggle.²⁷¹ Walzer asserts that military intervention should be morally and legally permissible by third-party states either against colonial governments or to offset proportionately a previous foreign intervention in a secession struggle.²⁷² Military intervention by a third-party state would never be required under Walzer's model,

265. HOROWITZ, *supra* note 43, at 272.

266. *See generally id.* at 272-77 (discussing the extent to which external intervention affects the outcome of secession efforts).

267. BROWNLIE, *supra* note 238, at 326-27.

268. *Id.* at 327.

269. Higgins, *supra* note 58, at 40-42.

270. *See* Louise Doswald-Beck, *The Legal Validity of Military Intervention by Invitation of the Government*, 56 BRIT. Y.B. INT'L L. 189, 251 (1986) (arguing that such military intervention at the invitation of states is illegal).

271. *See* MICHAEL WALZER, *JUST AND UNJUST WARS* 90-95 (2d ed. 1992).

272. *See id.* at 94.

because such intervention, although morally justifiable, might be imprudent due to the potential carnage and risks to world order.²⁷³

Walzer's approach does not reconcile the tension between the respect third parties owe to sovereign states under international law and the responsibilities that they would also owe to groups properly invoking a right of secession. Walzer sets forth the options facing states considering counterintervention on behalf of a secession movement. However, he does not provide express guidance as to the responsibilities of third parties to continue providing existing levels of assistance to states after such third parties become involved in a secession struggle.²⁷⁴

Arguably, continuing or increasing aid to a state facing a secession movement constitutes a form of intervention in favor of the sovereign power.²⁷⁵ Conversely, cutting off a previously existing source of supplies, aid, or other economic contacts whenever a secession struggle arises is destabilizing to the existing government and could be defined as a form of intervention on behalf of the secessionists.²⁷⁶ Currently, there is no agreed-upon method for measuring the point when separatist efforts become full-fledged, legitimate secession movements that create responsibilities for third parties,²⁷⁷ nor is there a consistent pattern of recent state practice reflecting international consensus as to what the responsibilities of third parties ought to be once a legitimate secession movement is identified.²⁷⁸ Any meaningful secession right under international law must clarify the responsibilities that its valid invocation would place upon third-party states.

Ideally, the valid invocation of the right of secession should have certain well-defined consequences. For example, a parent state arguably would have no legitimate authority to oppose the secession of a group validly invoking the right of secession.²⁷⁹ In addition, if

273. *See id.*

274. *See id.* at 91-101.

275. *See* Nye, *supra* note 263, at 83, 92 (arguing that intervention is a "matter of degree" and should not be viewed "solely in military terms").

276. *See* WALZER, *supra* note 271, at 96.

277. *See* BUCHANAN, *supra* note 6, at 2-3; *see also* BUCHHEIT, *supra* note 3, at 216 (stating that there is no "accepted teaching regarding the nature of a legitimate secessionist movement").

278. *See* Higgins, *supra* note 58, at 40-42.

279. The skeletal construction outlined here does not attempt to provide a framework for solving the disputes over ownership of certain state property, including military materials, which will inevitably arise once separation begins. The dispute between Russia and the Ukraine over ownership of the Black Sea fleet following the breakup of the Soviet Union is one such example. *See* Celestine Bohlen, *In Russia-Ukraine Fight Over Navy, Crimea Lies at Heart of the Struggle*, N.Y. TIMES, Mar. 31, 1992, at A6.

a parent state opposes a valid secession claim, third parties could be required to cut off military and nonhumanitarian aid to that state. Carrying this model a step further, third parties could be permitted to provide assistance to secessionists so long as there was broad international agreement, perhaps as evidenced by an instrument such as a United Nations Security Council resolution, that the secession right had been validly invoked.

Although it is useful to consider the imperatives that the valid invocation of the right of secession ought to place upon parent states and third parties, advocating such an approach may be unrealistic. Parent states have customarily struggled to preserve their territorial integrity in the face of secessionist challenges,²⁸⁰ and it appears unlikely that parent states will begin to refrain from opposing secession movements as a matter of principle. Efforts to establish limits on involvement by third-party states in secession struggles may be more promising, given that third parties have less at stake than parent states faced with secessionist insurrection. However, recent state practice has generally been characterized by increased intervention by third parties in civil conflicts, and this suggests that curtailing such intervention will prove challenging.²⁸¹

3. *Which Groups Are Entitled to Invoke the Secession Right.* The principal question that would accompany the establishment of a right of secession centers upon which groups would be entitled to invoke the right, and under what circumstances. As previously discussed, a limited right of secession would require that a presumption in favor of the sovereignty of parent states be overcome before secession would be available. In order to overcome this presumption, one possibility is to require a group invoking the secession right to occupy the seceding territory and be facing political oppression from the parent government. "Oppression" could be defined to include the violation of the fundamental human rights²⁸² of the individuals making up the

280. The Soviet Union's effective consent to the secessions of the Baltic states is relatively atypical. See *supra* note 144 and accompanying text. This may reduce the precedential impact of the Baltic states' secessions somewhat, although recognition by key members of the international community preceded the accession of the official organs of the Soviet government. See *supra* notes 141-44 and accompanying text.

281. See Higgins, *supra* note 58, at 40-42.

282. As defined by such instruments as the *Universal Declaration on Human Rights*, G.A. Res. 217A, U.N. GAOR, 3d Sess. at 71, U.N. Doc. A/810 (1948). Other sources for defining oppression might include the *International Covenant on Civil and Political Rights*, *supra* note 19, art. 27, at 56 ("[P]ersons belonging to . . . minorities shall not be denied the right, in community

group or the discriminatory denial of political power, such as the right to vote or seek political office, to a particular group by the parent state.

Under this model, the right of secession would not be available to groups for the sole purpose of preserving a culture, as proposed by Buchanan.²⁸³ Cultural differences are already a source of domestic group conflicts. Permitting groups such as the Québécois in Canada to invoke the right of secession based upon cultural or group identity alone would threaten to open the floodgates of secession, and could exacerbate group conflicts.²⁸⁴ It is difficult to imagine any clear limits upon a secession right that permits groups to secede from pluralistic, nonoppressive states such as Canada.²⁸⁵

The right of secession should also be unavailable to groups claiming that the governments of their parent states engage in economic discrimination or pursue economic or taxation policies that unjustly benefit another group at their expense.²⁸⁶ The removal of such economic variables from the secession model would ensure that the right of secession is not expanded too greatly at the expense of state sovereignty. Exercise of the right of secession is an extraordinary remedy, particularly if the valid invocation of the right prevents the parent state from legally opposing the secession.²⁸⁷ Such an uncommon remedy should be available only under extraordinary circumstances, and ordinary domestic economic grievances do not qualify. Only economic policies that rise to the level of oppression by denying the members of a group their political or fundamental human rights would give rise to a valid secession claim. Economically disadvantaged groups that do not face domestic political oppression or violations of their human rights must resort to international guarantees of minority

with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”).

283. See *supra* notes 248-49 and accompanying text.

284. See generally Nye, *supra* note 263, at 91 (predicting the disruption of international relations that would result from extending the right to self-determination too greatly).

285. Nye's concern about the destabilizing consequences of overextending the right of groups to seek political divorce appears to support this inference in the Canadian context. See generally *id.* But cf. Marc A. Thibodeau, Comment, *The Legality of an Independent Quebec: Canadian Constitutional Law and Self-Determination in International Law*, 3 B.C. INT'L & COMP. L. REV. 99, 136-40 (1979).

286. Buchanan refers to this as “discriminatory redistribution.” BUCHANAN, *supra* note 6, at 40.

287. See *id.* at 21 (describing secession as the “most extreme” of a range of possible means of exercising the “right to self-determination” and as entailing “high moral and practical costs” relative to less extreme alternatives for seeking greater political autonomy).

rights or to their domestic political processes for redress.²⁸⁸ Consistent with this effort to remove economics from the secession equation, the right of secession should be available to oppressed groups regardless of whether the economic viability of the parent state would be threatened by the secession. Finally, the right of secession should not be available to groups seeking sovereignty in order to preserve or impose immoral practices or institutions that violate fundamental human rights.²⁸⁹ Placing limitations such as these on groups laying claim to a secession right could increase the likelihood of such a right becoming part of customary international law by assuaging the concerns of states and scholars that the right could be applied too broadly.²⁹⁰

4. *Majoritarianism and the Problem of Encapsulation of Minority Groups.* Limiting the availability of the right of secession to instances in which the majority of persons in a particular territory favors secession would confine the application of the right to reasonably well-defined circumstances. Such a limitation would help to preserve international order and allay concerns that recognition of a secession right will lead every group to seek its own state.²⁹¹ Usually this would mean that an oppressed group seeking to secede must constitute a majority of the population of a particular seceding territory.²⁹² Otherwise, every small oppressed group could lay valid claim to the secession right, resulting in the wholesale, legally unassailable division of many existing states into smaller parts containing newly encapsulated ethnic groups.²⁹³ The approach discussed here would prevent the antidemocratic encapsulation of majority ethnic groups within seceding

288. See *supra* note 282 and accompanying text.

289. A similar argument is advanced by Buchanan. See BUCHANAN, *supra* note 6, at 158.

290. See *supra* notes 261-63 and accompanying text.

291. See *supra* notes 93-99, 263 and accompanying text; see also Fouad Ajami, *Tribal Nationalism, Balkanizing the World*, U.S. NEWS & WORLD REP., Dec. 28, 1992/Jan. 4, 1993, at 15 (describing the phenomenon of nationalities increasingly craving states of their own). Concerns about such increased nationalist tendencies would likely hinder the acceptance of a secession right by the world community if left unaddressed. See BUCHHEIT, *supra* note 3, at 244.

292. In Latvia, however, many Russians voted in favor of Latvian independence in the plebiscite held on March 3, 1991. See Francis X. Clines, *In Latvia, Even Many Russians Vote Independence*, N.Y. TIMES, Mar. 5, 1991, at A3. Thus, it is conceivable that some minority ethnic groups could still validly invoke the right of secession where a sufficient number of members of a dominant group in a territory also support secession.

293. See Aschenbach, *supra* note 108, at 8 (quoting Richard Roberts, director of the Center for African Studies at Stanford University, as saying that, in Africa, "[i]f every ethnic group were a nation-state, there would be 850 to 1,000" nation-states).

territories, while providing at least some oppressed groups with a lasting means for escaping oppression.

Permitting secession only when a majority of persons in a given territory favors it is problematic. Such a rule would usually work to deny the availability of the right of secession to groups that constitute a minority of the population within a given territory. The only recourse for minority groups would be to invoke international guarantees of minority rights for redress of grievances at the international level, despite the unfortunate inadequacy of these remedies in many instances.²⁹⁴ Concerns over the containment of minority groups within seceding territories are well-founded. However, in order to permit the establishment of a useful secession right without compromising international stability, the separatist claims of minority groups arguably must give way to majoritarianism, as described here. Prohibiting secession where minority encapsulation could result would thwart secession in nearly every instance because seceding regions almost always contain heterogeneous populations.²⁹⁵ Ideally, determining whether a majority of the population of a territory favors secession could be accomplished through plebiscites or referenda,²⁹⁶ although a particularly oppressive regime could obstruct such mechanisms.

5. *What Territories Seceding Groups Can Validly Claim.* The unilateral annexation or unlawful absorption of a territory should be viewed as justifying the valid invocation of the right of secession in some circumstances. Such an approach would closely parallel the "historical grievance" justification for secession proposed by Brilmayer.²⁹⁷ Groups within territories that were unlawfully absorbed by states should have a right to secede if the group's claim to sovereignty has been continuously reasserted by the group to the extent possible, if the group continues to view itself as a nation, and if its absorption was a relatively recent event. There can be no bright line rule stating when a historical claim to territory should expire or to

294. Such recourse would include appeals to guarantees contained in such documents as the United Nations Declaration on Human Rights, pleas for international sanctions, and seeking redress of grievances through domestic means, including revolution. See *supra* note 282 and accompanying text.

295. HOROWITZ, *supra* note 43, at 267.

296. Popular votes concerning secession or independence were successfully held in all three of the Baltic states in 1991 and in Slovenia in 1990. See *supra* notes 135–36, 168 and accompanying text.

297. See *supra* notes 231–32 and accompanying text.

what extent each of these factors should be satisfied. The support of the international community for the Baltic states' claims to independence suggests that the collective opinion of the international community, perhaps as manifested through the United Nations, can provide guidance concerning the application of the right of secession in this context.²⁹⁸

The more problematic question concerns which territories seceding groups are entitled to claim absent a "historical grievance." Permitting the secession question to be decided by a majority of persons within a given territory, as discussed above, may only be workable when the seceding territory can be clearly and logically defined. This becomes increasingly difficult when the territory that the secessionists are claiming has never been independent or autonomous and when there is no political, ethnic, geographic, or other division to use as a logical or even arbitrary basis for partition. For example, it would be unfair to permit secessionists to lay claim to less populated, adjoining regions by carefully gerrymandering the proposed partition line in order to dilute the voting strength of secession opponents in any plebiscite or referendum on secession. Even when voting on secession is possible, there may be no fair or workable way to subdivide a territory for voting purposes. For example, the situation in Bosnia-Herzegovina and Croatia, where pockets of majority Serb areas and non-Serb areas are interspersed, emphasizes the complexities associated with partitioning seceding territory.²⁹⁹ It is difficult to imagine an effective way of dividing Bosnia-Herzegovina for purposes of a referendum on border partitioning at the present time.³⁰⁰

6. *The Relationship of Secession to Self-determination.* A further unresolved issue related to secession is the relationship a secession

298. See *supra* notes 122, 142-43 and accompanying text. However, the international community was equivocal in its support for secession in the Baltics prior to August 1991. See *supra* notes 145-47, 153 and accompanying text.

299. The situation in Bosnia-Herzegovina also demonstrates the importance of ensuring that seceding states will have manageable, viably drawn external borders. See John F. Burns, *Serbs and Croats Now Join in Devouring Bosnia's Land*, N.Y. TIMES, Oct. 22, 1992, at A1 (discussing the pockets of ethnic groups in Bosnia-Herzegovina and Croatia); *Reinventing Bosnia*, ECONOMIST, Aug. 22, 1992, at 14 (discussing the difficulty of drawing new borders in Bosnia-Herzegovina that will keep the warring ethnic groups separate).

300. See sources cited *supra* note 299. *But cf.* Paul Lewis, *Peace Plan for Bosnia in Danger as Serbs Reject Key Compromise*, N.Y. TIMES, Mar. 5, 1993, at A8 (describing the proposal made by international mediators for partitioning Bosnia-Herzegovina into ten "semi-autonomous" provinces, each separately controlled by Serbs, Croats, or Muslims).

right would have to the right of self-determination. For the most part, self-determination has been interpreted as applying to situations involving geographically distinct territories or political units such as colonies rather than to any group seeking independence.³⁰¹ Furthermore, self-determination has generally been viewed as not justifying secession.³⁰² However, Buchheit has interpreted the United Nations General Assembly's Declaration on Friendly Relations as extending the right of self-determination to include secession in some contexts.³⁰³

The right of self-determination is widely accepted as a norm of customary international law.³⁰⁴ It could be easier to justify a secession right as an extension of the existing right of self-determination rather than attempting to develop the right of secession as an entirely new international law norm. States will likely show some reluctance to accept the extension of self-determination to include a secession right. As previously discussed, concerns over the possibility that a flood of secession efforts will result from the recognition of a secessionist right of self-determination have existed since President Wilson embraced the right shortly after World War I.³⁰⁵ These fears have done much to ensure that no right of secession has ever been recognized.³⁰⁶

7. *Application of the Framework Model.* The foregoing discussion, which sketches a secession right available only to oppressed groups when a majority of the population of a given territory favors secession, is meant to provide a rough starting point for considering the proper form a secession right should take. Applying this framework model of the right of secession to the case studies discussed above reveals how it would work in practice. Under this model, Biafra, Bangladesh, and the Baltic states all had valid secession claims. The seceding groups in Biafra and Bangladesh constituted a majority of the population within the seceding territories. Each group also faced oppression at the hands of its parent state's government in the form of widespread, deadly attacks.³⁰⁷ The people of the Baltic

301. WILSON, *supra* note 103, at 88.

302. *See supra* note 105 and accompanying text.

303. *See supra* note 22 and accompanying text.

304. *See supra* note 102-03 and accompanying text.

305. *See supra* notes 93-99 and accompanying text.

306. *See id.*

307. *See supra* notes 49, 77-78 and accompanying text.

states had a historical claim to their territory, which had been unjustly taken from them by the Soviet Union. Latvians, Lithuanians, and Estonians all had maintained a sense of national identity and had kept their secessionist claims alive through an ongoing desire for independence.³⁰⁸ Despite the fact that large numbers of Russians had settled in the Baltic states since their unlawful annexation, the presence of these settlers should not submerge the rights of the Latvians, Lithuanians, and Estonians to reassert their historical claims to their native territory, even if the settlers had constituted a majority of the population.³⁰⁹ If annexing states could destroy the secession claims of unlawfully annexed national groups by diluting the ethnic composition of the annexed territory with settlers, this could encourage the so-called ethnic cleansing recently undertaken by Serbia in parts of Bosnia-Herzegovina.³¹⁰

In contrast to the cases above, Katanga would not have a valid secession claim under this model because it is not clear that its population was being oppressed by the central government of the Congo. Likewise, Quebec and the Confederate States of America during the American Civil War would not have valid secessionist claims because neither of the seceding groups was oppressed by the government of its parent state. Furthermore, the attempted secession of the Confederate States was illegitimate because it was undertaken for the immoral purpose of preserving slavery, a violation of fundamental human rights.³¹¹

The rough model for a secession right outlined in this section is vulnerable to several criticisms. For example, it may be difficult to gauge whether the majority of the people in a given territory wish to secede.³¹² Additionally, the existing regime of minority rights to which minority groups must resort for redress of grievances in lieu of the right of secession may offer inadequate protection.³¹³ Finally, the differentiation between minority and majority groups seeking to secede does not solve the problem of encapsulation within seceding states.³¹⁴

308. See *supra* notes 122, 233 and accompanying text.

309. See *supra* note 235 and accompanying text.

310. See *supra* notes 194-97 and accompanying text.

311. See *supra* note 289 and accompanying text.

312. See generally BUCHHEIT, *supra* note 3, at 12 (discussing the potential difficulties associated with attempting to promote self-determination through plebiscites).

313. For a further discussion of minority rights under the current international law regime, see Hurst Hannum, *Contemporary Developments in the International Protection of the Rights of Minorities*, 66 NOTRE DAME L. REV. 1431 *passim* (1991).

314. See *supra* notes 291-96 and accompanying text.

Distinguishing between oppressed minority and majority groups will not eliminate group conflicts, but it will at least limit the undemocratic encapsulation of majorities within newly seceding states. Other possible criticisms center upon the model's presumption in favor of sovereignty, its definition of the groups entitled to secede, and its definition of oppression giving rise to a secession right, which excludes most cultural and economic grievances. This discussion is not intended to present a comprehensive model for a right of secession, however. It is meant only to illustrate some problems associated with the recognition of a secession right under international law and to suggest an initial approach to solving them.

V. CONCLUSION

It is apparent from the foregoing analysis that there is no recognized, coherent right of secession under existing international law. Recent state practice suggests that a shift in the international community's approach to secession movements may be underway. Nevertheless, the establishment of a right of secession as an accepted norm under customary international law is not imminent. Furthermore, the recent secessionist violence in the former republics of Yugoslavia — what could be described as the renewed balkanization of the Balkans — will likely cool some of the enthusiasm for recognition of a secession right under international law and could encourage a return to the historical disapproval of secession in state practice.

The primary object of any right of secession should be to provide certain oppressed groups with the means to free themselves from the control of oppressive parent states through invocation of a claim to part of the territory of those states. The large number of ethnic and minority groups in the world and the heterogeneous nature of the populations of most territories in which ethnic conflicts occur prevent secession from serving as a means for easing ethnic conflicts through a redrawing of national boundaries. A secession right based on the notion that ethnic or minority groups are automatically entitled to their own territory would threaten to internationalize many domestic group conflicts and could create new conflicts. In contrast, a right of secession available only to oppressed groups when a majority of persons within a particular territory favors separation could provide a permanent political remedy to at least some groups without undermining international order or undemocratically "encapsulating" ethnic majorities in newly independent states.

The framework model for a possible secession right set forth above is not intended to be comprehensive. Rather, it is meant to provide a preliminary conceptual framework for a carefully limited secession right. The foregoing discussion demonstrates that a secession right can be conceptualized which should not prove excessively destabilizing to international order. However, it is also apparent that many serious obstacles must be overcome before states will accept secession as an international legal norm. Meanwhile, secession movements are a reality and, by some accounts, may be increasing in frequency.³¹⁵

The adoption of a United Nations declaration or an international convention on secession would clarify the limits of a secession right, thus providing some useful direction both to potential secessionists and to states dealing with secessions. Although such an instrument would not create a secession right, it would provide evidence of the international community's collective opinion on secession, which could speed the process of establishing secession as a recognized norm of customary international law. However, such a development appears unlikely due to states' concerns that secession will threaten their sovereignty and international stability. It is more probable that states will continue to deal with secession responsively, on a case-by-case basis, such as occurred with the secessions of the Baltic states and Yugoslavia. In time, this state practice could establish a secession right under customary international law. This development is likely to be slow, however, and could produce an amorphous, loosely defined right, less useful as a guide than if states had adopted a declaration or other international agreement concerning secession and its limits. Until either a coordinated approach to secession is developed by the international community or a coherent secession right is recognized under customary international law, states will be free to respond to individual secession movements in accordance with their own political interests. This prospect appears more uncertain and destabilizing than the likely effects of recognizing a carefully limited secession right derived from the framework outlined here.

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315. See, e.g., Aschenbach, *supra* note 108, at 8 (describing the volatility of existing African political boundaries and suggesting that the borders are likely to change in the next decade).

