

The Logic of Secession

Self-determination is the legitimating myth for modern nation-states.¹ Despite its radical implications for restructuring international political authority, the doctrine of self-determination has functioned primarily to facilitate the breakup of colonial empires² and to validate the norm of popular consent in the disposition of territory.³ As the era of decolonization draws to a close, leaving in its wake an increasingly pluralistic and interdependent world, the right of self-determination is certain to be invoked in a variety of new situations.

Among the most problematic demands for self-determination will be those for secession. Claims for separation from an existing nation fundamentally challenge the long-established principle of territorial integrity⁴ and highlight the failure of the state system to provide mechanisms for the orderly emergence of new communities. Yet, because the individual's right to choose the community he regards as optimal for his development is a fundamental social value,⁵ the demands

1. See pp. 804-07 *infra*; U.N. CHARTER art. 1, para. 2 (principle of equal rights and self-determination); *id.* art. 55 (same); Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514, 15 U.N. GAOR, Supp. (No. 16) 66, U.N. Doc. A/4684 (1960) (right of peoples to self-determination) [hereinafter cited as Res. 1514(XV)]; R. EMERSON, FROM EMPIRE TO NATION (1960).

2. See p. 804 *infra*; Res. 1514(XV), *supra* note 1 (unanimous General Assembly resolution, annually reaffirmed, proclaiming necessity of bringing unconditional end to colonialism); A. SUREDA, THE EVOLUTION OF THE RIGHT OF SELF-DETERMINATION 58-94 (1973) (discussing evolving General Assembly competence to determine whether territory is non-self-governing and whether claim to exercise self-determination exists, including recommendations on Algeria, French Somaliland, Gibraltar, Rhodesia).

3. See Advisory Opinion on Western Sahara, [1975] I.C.J. 12 (holding application of principle of self-determination and Res. 1514(XV), *supra* note 1, to Western Sahara peoples paramount over evidence of past legal and historical ties to Morocco and Mauritania); 1 S. WAMBAUGH, PLEBISCITES SINCE THE WORLD WAR 3-45 (1933) (attempts to observe principle of self-determination among border populations after World War I).

4. See U.N. CHARTER art. 2, para. 4 ("All Members shall refrain . . . from the threat or use of force against the territorial integrity or political independence of any state . . ."); Island of Palmas Case (United States v. Netherlands), 2 R. Int'l Arb. Awards 829, 839 (1928) ("Territorial sovereignty . . . involves the exclusive right to display the activities of a State.")

5. See J. MILL, *Considerations on Representative Government*, in 19 COLLECTED WORKS OF JOHN STUART MILL 547 (J. Robson ed. 1977) ("one hardly knows what any division of the human race should be free to do if not to determine with which of the various collective bodies of human beings they choose to associate themselves"); cf. McDougal, Lasswell, & Chen, *Nationality and Human Rights: The Protection of the Individual in External Arenas*, 83 YALE L.J. 900, 903 (1974) (utmost voluntarism in individual's affiliation, participation, and movement is long-term goal).

of peoples⁶ for recognition, freedom of association, and equal participation in the international order must be directly confronted.

This Note suggests that when the associational right of a group⁷ to determine its political existence conflicts with an existing state's right of noninterference, the right of secession is paramount so long as that exercise of self-determination does not abridge the rights of other groups to self-determination.⁸ The right of secession thus allows for an adjustment of the institutions of civil government to evolving concepts of group identity—an adjustment that grants primary importance to the value of self-definition. The Note outlines factors useful in identifying and resolving secessionist claims, and demonstrates their use in assessing Somali demands for self-determination in the Ogaden.

I. From Self-Determination to Secession

All questions of statehood are grounded in the tension between two conflicting principles of nationality: territorial integrity and self-determination.⁹ Territorial integrity is a functional means of defining existing nations; it ensures order, stability, and finality in relations between states.¹⁰ Self-determination responds to social change and to

6. A people is an alignment of individuals from different social classes and occupations, united by intensive social and economic communication. The interaction between a people's subjective, cultural symbols and objective economic factors of communication, and the interplay between a people and its environment, enable one to identify roughly both the physical and psychological extent of community ties. The degree to which a people strives to acquire power for itself influences the formality of its political and social organizations as well. See K. DEUTSCH, *NATIONALISM AND SOCIAL COMMUNICATION* 70-80 (1953); C. GEERTZ, *After the Revolution: The Fate of Nationalism in the New States*, in *THE INTERPRETATION OF CULTURES* 249-52 (1973).

7. Like all human rights, self-determination is based in the individual; this particular right, however, acquires meaning only when asserted as part of a group.

8. Ideally, secessionist claims should encourage both increasing participation in one's community and increasing equality among groups, thus fostering an environment in which self-determination can be exercised most meaningfully. At a minimum, no group can deny the existence of another group. See pp. 818-19 *infra*.

9. Compare Res. 1514(XV), *supra* note 1, para. 2 (all peoples have right to self-determination) with *id.* para. 6 (any attempt aimed at disruption of territorial integrity is incompatible with purposes of U.N. Charter). Both principles are fundamental United Nations norms. See U.N. CHARTER art. 1, para. 2 (principle of self-determination of peoples); *id.* art. 2, paras. 4, 7 (principles of territorial integrity and nonintervention).

10. See *Temple of Preah Vihear Case*, [1962] I.C.J. 6, 34 ("In general, when two countries establish a frontier between them, one of the primary objects is to achieve stability and finality."). Although territorial integrity and noninterference are the linchpins of the present state system, they are not absolutes. See, e.g., *Fisheries Jurisdiction Case*, [1974] I.C.J. 3, 22-28 (state's unilateral competence over its territory and right to noninterference may be moderated due to positions and concerns of other states); *Asylum Case*, [1950] I.C.J. 265, 274-75 (diplomatic asylum entails derogation from territorial sovereignty of host state).

developments in people's identification systems; it is a fundamental ethic of the twentieth century, affirming the right of people to choose and control their own destiny.¹¹ Resolution of a secessionist claim involves a choice between these competing norms.

A. *Self-Determination as a Fundamental Right*

Self-determination has appeared in two historical guises in this century. After World War I, self-determination was in theory granted to nationalities that had previously lacked political form. The victorious Allies, however, usually did no more than ratify accomplished facts arising out of the situation of disorder in the defeated countries.¹² The principle was restricted in two regards: it applied only to the vanquished powers,¹³ and only historically recognized ethnic groups were considered natural political entities.¹⁴ Self-determination was a political principle, not a legal right.¹⁵

After World War II, self-determination emerged as a fundamental principle in the United Nations Charter¹⁶ and provided the basis for the decolonization of Africa and Asia. Yet, the inherited political boundaries of the emerging nations continued to constrain the scope of self-determination.¹⁷

The contradiction between the two phases is notable. The Wilsonian era assumed that the characteristics of the population involved were

11. See note 1 *supra*; G.A. Res. 1541, 15 U.N. GAOR, Supp. (No. 16) 29, U.N. Doc. A/4684 (1960) (implementing Res. 1514(XV), *supra* note 1) [hereinafter cited as Res. 1541(XV)]; Suzuki, *Self-Determination and World Public Order: Community Response to Territorial Separation*, 16 VA. J. INT'L L. 779, 785-89 (1976) (self-determination involves making and breaking of states as community demands change).

12. See A. COBBAN, NATIONAL SELF-DETERMINATION 22-23 (1945) (emergence of Czechoslovakia and Yugoslavia represented political realities, not actual wishes of peoples).

13. See *id.* at 19, 22.

14. See *id.* at 21 (fundamental weakness in Wilson's conception of self-determination was "failure to realize how indeterminate a criterion nationality might be"); cf. W. OFUATEY-KODJOE, THE PRINCIPLE OF SELF-DETERMINATION IN INTERNATIONAL LAW 30-31 (1977) (national determinism theory postulates "one nation: one state," with each state ethnically homogeneous).

15. See LEAGUE OF NATIONS O.J., Spec. Supp. 3, at 5 (1920) (resolution of Aaland Islands dispute between Finland and Sweden held right of free self-determination not "rule of international law and the League of Nations has not entered it in its covenant").

16. See U.N. CHARTER art. 1, para. 2; art. 55.

17. See Resolution on Border Disputes, O.A.U. Doc. AHG/Res. 16(I) (1964), reprinted in I. BROWNIE, BASIC DOCUMENTS ON AFRICAN AFFAIRS 360 (1971) (accepting borders as they existed on date of independence); R. EMERSON, SELF-DETERMINATION REVISITED IN THE ERA OF DECOLONIZATION 28 (1964) (identifying three elements in self-determination formula within decolonization context: all dependent peoples are entitled to freedom; peoples so entitled are defined in terms of existing colonial territories, each of which contains one nation; once such a people has come to independence, no residual right of self-determination remains within any group, either within or cutting across its frontiers).

the controlling factor; new nations would be composed of peoples sharing objectively identifiable traits of language, culture, religion, and ethnicity. The anticolonialist phase, ironically, accepted the old colonial boundaries as legitimate and unalterable, regardless of the incongruous mix of peoples within the political unit. Both concepts of self-determination are inadequate, however, insofar as they ignore the basic principle underlying that right: that the freely expressed will of the people should govern.¹⁸

While stopping short of the associational logic underlying self-determination, the international legal system has paid some obeisance to these historical developments and to basic principles of twentieth century politics. The system of non-self-governing and trust territories that was established after World War II had as its goal self-determination as indicated by the freely expressed will of the peoples.¹⁹ Article 21 of the Universal Declaration of Human Rights declares the will of the people to be the basis of government.²⁰ Further developments in the decolonization process have catapulted the principle of self-determination into the status of a generally conceded international right in that context.²¹ The 1960 Declaration on the Granting of Indepen-

18. See Advisory Opinion on Western Sahara, [1975] I.C.J. 12, 122 (separate opinion of Dillard, J.) ("It is for the people to determine the destiny of the territory and not the territory the destiny of the people."). This view reflects President Woodrow Wilson's World War I statement: "No peace can last, or ought to last, which does not recognize and accept the principle that governments derive all their just powers from the consent of the governed, and that no right anywhere exists to hand peoples about from sovereignty to sovereignty as if they were property." 54 CONG. REC. 1742 (1917) (Fourteen Points address to Congress).

Historically, statehood was based on recognition by existing states. This was essentially a functionalist approach—any effective government was a state. See *Tinoco Case* (Great Britain v. Costa Rica), 18 AM. J. INT'L L. 147 (1924). Self-determination, which looks to popular support for assessing legitimacy, demands certain de jure criteria for statehood. See Crawford, *The Criteria for Statehood in International Law*, 48 BRIT. Y.B. INT'L L. 93, 149-64 (1976-77). Secession is simply a continuing reassessment of the basis of popular support that confers legitimacy.

19. See U.N. CHARTER art. 76 (freely expressed wishes of people premise of self-government); G.A. Res. 742, 8 U.N. GAOR, Supp. (No. 17) 21, U.N. Doc. A/2630 (1953) (delineating factors indicative of attainment of independence, free association, other freely determined status) [hereinafter cited as Res. 742].

20. G.A. Res. 217, 3(1) U.N. GAOR, U.N. Doc. A/810, at 71, 75 (1948) [hereinafter cited as Universal Declaration of Human Rights]. The Universal Declaration was adopted 48 to 0 with 8 abstentions, including the Soviet Union. Although not a legally binding instrument, it is regarded by some jurists as the law of the United Nations, interpreting and defining the human rights provisions of the Charter and thus carrying legal obligations for United Nations members. See I. BROWNIE, *BASIC DOCUMENTS ON HUMAN RIGHTS* 106 (1971).

21. There has been an ongoing, and perhaps never-ending, debate as to whether self-determination is a legal right or a principle. Compare R. HIGGINS, *THE DEVELOPMENT OF INTERNATIONAL LAW THROUGH THE POLITICAL ORGANS OF THE UNITED NATIONS* 90-106 (1963) (self-determination is legal right based on U.N. Charter, Res. 1514(XV), and 17

dence,²² passed unanimously by the United Nations with a low number of abstentions, precipitated widespread acknowledgment of self-determination as a right.²³ The organization of a United Nations committee to implement the right²⁴ and the acceptance of independence by the old colonial powers²⁵ indicate that self-determination is more than just a moral norm.

Within the decolonization context, then, self-determination may well be regarded as a peremptory right—a general principle by which a significant number of states feel bound.²⁶ A series of General Assembly resolutions, proclaiming the legitimacy of the struggle for independence, elevates the right of self-determination over norms of nonviolence.²⁷ Furthermore, the recent Advisory Opinion on Western Sahara held, albeit obliquely, that the present wishes of the inhabitants are paramount to past legal ties.²⁸

years of evolving United Nations practice, including actions with respect to Algeria, Angola, and Southern Rhodesia) with Gross, *The Right of Self-Determination in International Law*, in *NEW STATES IN THE MODERN WORLD* 156 (M. Kilson ed. 1975) (General Assembly has no law-making competence and principle of self-determination has not been transformed into right).

22. See Res. 1514(XV), *supra* note 1.

23. See Emerson, *The New Higher Law of Anti-Colonialism*, in *THE RELEVANCE OF INTERNATIONAL LAW* 157 (K. Deutsch & S. Hoffmann eds. 1968) (although unanimity behind 1514(XV) is deceptive, in that United States, United Kingdom, France, Belgium, and Australia were among nine states abstaining from vote, any cause with Soviet Union, China and vast majority of states behind it represents substantial force).

24. See R. HIGGINS, *supra* note 21, at 101. Interestingly, the United States voted in favor of Resolution 1654 (XVI), establishing the Committee of 17, although it had abstained from Res. 1514(XV). See W. OFUATEY-KODJOE, *supra* note 14, at 229 n.89.

25. See W. OFUATEY-KODJOE, *supra* note 14, at 129-47 (much decolonization went on outside United Nations because of acquiescence of colonial powers, which helped concept of self-determination ripen into right).

26. See *Vienna Convention on the Law of Treaties*, 8 INT'L LEGAL MATERIALS art. 53, at 698 (1967) (peremptory norm is "norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character").

27. See Res. 3314, 29 U.N. GAOR, Dec. 14, 1974, in 14 INT'L LEGAL MATERIALS 588 (1975) (adoption of definition of aggression that does not prejudice right of self-determination); 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, 25 U.N. GAOR, Supp. (No. 28) 121, 124, U.N. Doc. A/8028 (1970) (authorizing moral and material support for national liberation movements against colonial powers) [hereinafter cited as Declaration on Friendly Relations]. Although these resolutions are not legally obligatory and do not have the cumulative impact of self-determination resolutions, United Nations support for national liberation movements in Angola, Mozambique, and Guinea-Bissau, the granting of observer status to the Palestine Liberation Organization, and Portugal's inability to muster support against India's invasion of Goa attest to the growing force behind the belief.

28. Advisory Opinion on Western Sahara, [1975] I.C.J. 12, 68 (Court technically found legal ties, yet regarded them as insufficient to establish ties of territorial sovereignty or to

Beyond the decolonization context, however, international law has responded marginally to these beliefs in self-determination and the consent of the governed. The 1966 International Covenants on Human Rights, which entered into effect in 1976, recognize self-determination as a fundamental right underlying the meaningful exercise of all other rights.²⁹ Additionally, the United Nations in its 1970 Declaration of Friendly Relations went so far as to concede a right to exercise self-determination against any nonrepresentative government.³⁰ But rigid adherence to the norm of territorial integrity as an ahistorical absolute has precluded the incorporation of an evolving concept of self-determination in the definition of the international community.

B. *The Implications of the Right of Self-Determination*

Given the international community's acceptance of the right of self-determination in the decolonization context, consideration must also be given to that right's natural outgrowth, secession.³¹ Although de-

affect application of principle of self-determination); *cf.* Island of Palmas Case (United States v. Netherlands), 2 R. Int'l Arb. Awards 829 (1928) (traditional title dispute in which tribunal awarded territory to power first exercising effective control over area, regardless of subsequent changes in normative law).

29. See International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200, 21 U.N. GAOR, Supp. (No. 16) 49-52, U.N. Doc. A/6316, art. I(1) (1966) ("All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."); International Covenant on Political and Civil Rights, G.A. Res. 2200, 21 U.N. GAOR, Supp. (No. 16) 52-58, U.N. Doc. A/6316, art. I(1) (1966) (same) [two documents—passed simultaneously—hereinafter referred to as International Covenants on Human Rights]. The covenants have acquired legal status. 30 U.N. GAOR, Third Committee (2121st mtg.) 56, U.N. Doc. A/10196 (1975) (Covenant on Economic, Social and Cultural Rights enters into effect after Jamaica becomes 35th State to ratify).

30. See Declaration on Friendly Relations, *supra* note 27, at 124 (by prohibiting dismemberment or impairment of territorial integrity of government conducting itself "in compliance with the principle of equal rights and self-determination of peoples," resolution gives *prima facie* support to existing states).

31. Two recent attempts have been made to define a right of secession. One, offered by Lee Buchheit, see L. BUCHHEIT, *SECESSION* (1978), seeks to maximize order and minimize suffering in resolving secessionist claims by developing a utilitarian scheme "whereby the institution of the existing State will be respected, unless to do so would contribute to more international disharmony than would result from legitimating the separation of a component group." *Id.* at 227. Buchheit's analysis attempts to measure the value of secession by the yardstick of disruption. Every claim of self-determination, however, unavoidably involves change and disruption. In striving to impose order on a situation usually characterized by flux and conflict, Buchheit undercuts the power of self-determination claims that involve fundamental human rights.

An alternative approach, developed by Eisuke Suzuki, see Suzuki, *supra* note 11, situates secessionist demands in a contextual, human-rights framework. He contends that "to approximate a public order of human dignity . . . the total context of such a [self-determination] claim must be considered: the potential effects of the grant or denial of

colonization and secession are based on the same political principle—self-determination—the international community has focused on the geographic distinction between the two rather than on the common principle. Yet, the discriminatory treatment of a population living in a contiguous area is no more justified than the subjugation of a population living in a different part of the globe.³²

At base, self-determination is a concept of group expression and consensual government. Secession is part of a continually changing process of self-definition that reflects the varying rates at which political and economic institutions and group self-perceptions undergo transformation. Secessionist demands encounter the same problems of citizen allegiance, boundary definition, and resource distribution faced by earlier self-determination claims;³³ they only focus the debate between change and stability at a more explicit, and heretofore unacceptable level.³⁴ Just as self-determination challenged traditionally respected claims based on historic, occupative, or contiguous title,³⁵ future secessionist claims will challenge present territorial boundaries and distributions of authority.

Yet, secession is not a simple act of fragmentation. It is, rather, a complex, continuing process of regrouping personal allegiances, redefining boundaries and control over resources, and restructuring the

self-determination upon the subgroup, the incumbent group, neighboring regions, and the world community." *Id.* at 784. Yet the values and goals by which Suzuki measures secessionist claims reflect conflicting equity and efficiency concerns, and when choices between maximizing participation and maximizing production of values must be made, one has no sense of how to balance, order, or weigh the alternatives.

32. Bangladesh illustrates the fuzzy distinction between decolonization and secession. See Nanda, *Self-Determination in International Law*, 66 AM. J. INT'L L. 321, 336 (1972).

33. Cf. A. SUREDA, *supra* note 2, at 143-51 (emergence of West New Guinea to independence posed question as to whether Papuans were independent people or Indonesian citizens, whether old Dutch colony was an independent national unit or an integral part of Indonesia).

34. For traditional objections to self-determination, see A. COBBAN, *supra* note 12, at 17-19 (objections of Italians, French, British, and U.S. Secretary of State Lansing to Wilson's principle on grounds of national security, historic rights, and economic interests that should have preference). Modern objections to secession are often less subtle. U.N. Secretary General U Thant expressed the view of most existing governments:

So far as the question of secession of a particular member state is concerned, the United Nations' attitude is unequivocal. As an international organization, the United Nations has never accepted and does not accept and I do not believe that it will ever accept the principle of secession of a part of its Member State.

7 U.N. MONTHLY CHRONICLE, March, 1970, at 36.

35. See Advisory Opinion on Western Sahara, [1975] I.C.J. 12, 29-30 (historic title is basis of Morocco's and Mauritania's claims); Advisory Opinion on Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), [1971] I.C.J. 16, 43 (occupative and administrative title foundation for South Africa's claim) [hereinafter cited as Namibia Advisory Opinion].

participatory mechanisms within and among states. Knowledge that the option of separation exists can provide a group with the sense of equality and potential power needed to persevere in an existing state;³⁶ for those truly oppressed, the right will provide the only means of effectuating self-determination.

Finally, recognition of a right to secession will alter obligations and duties among states. A wide range of strategic responses, including intervention, is available to third parties once they have ascertained that a legitimate claim exists.³⁷ Faced with a legitimate secessionist claim, claims by the existing state to domestic jurisdiction become invalid, for they are synonymous with assertions of sovereignty over the territory, which is exactly the issue in dispute.

C. *The Conflict of Secession with Other Fundamental Norms*

Claims of secession have traditionally been countered by arguments based on recognized international principles of noninterference, territorial integrity, and political independence. Any recognition by the world community that a secessionist claim affects global peace—and is therefore potentially subject to international sanctions or support³⁸—is generally met by claims that a secessionist movement is an internal affair governed by principles of noninterference.³⁹ At the national level, a people's claim to redefine community boundaries clashes with the existing state's demand for stability through territorial integrity.⁴⁰ Descending to the individuals and groups involved, claims for human rights, freedom of association, and respect for minorities encounter demands by existing governments for obedience and allegiance in order to maintain political independence and national security.⁴¹ What is

36. See L. BUCHHEIT, *supra* note 31, at 98-99 (although no explicit provision for secession in union of Norway and Sweden in 1815, association was regarded as voluntary act of equal parties and dissolution in 1905 was peacefully accepted after plebiscite).

37. See pp. 814-15 *infra* (enforcement possibilities).

38. See U.N. CHARTER art. 39 (Security Council determines existence of threat to peace and measures to be taken).

39. See U.N. CHARTER art. 2, para. 7 (nonintervention in matters within domestic jurisdiction); compare Nanda, *supra* note 32, at 335 (U Thant concerned that Pakistani conflict threatened world peace) with Organization of African Unity (OAU) Resolution on Situation in Nigeria, AHG/Res. 51(IV), 6 INT'L LEGAL MATERIALS 1243 (1967) ("[r]eiterating their condemnation of secession" and "recognizing that situation was an internal affair, the solution of which is primarily the responsibility of Nigerians themselves").

40. See note 9 *supra*.

41. Compare International Covenant on Political and Civil Rights, *supra* note 29, art. 22(1) (right to freedom of association) with *id.* art. 22(2) (rights restricted only by legal sanctions necessary in democratic society for public safety and national security interests) and *id.* art. 4(1) (in times of emergency, state may derogate from human rights obligations in Covenant).

ultimately at issue is the extent to which a state is regarded as a compulsory or a voluntary association.⁴²

Close examination of conventional objections, however, reveals weaknesses in their underlying logic and empirical assumptions. At the international level, a regime of interdependence has characterized the post-World War II era: military alliances, economic ties, trade relations, and currency arrangements circumscribe the sovereignty of the participants. Noninterference has become a nonreality as the growth in transnational exchanges and global obligations has undercut the decisiveness of national boundaries.⁴³ International law has haltingly paralleled this development toward interdependence by recognizing areas of shared concern in space, over the seas, and with respect to people.⁴⁴ The submission of disputes to arbitral or judicial decision, the renunciation of war,⁴⁵ and the submission of trusteeship territories to international control⁴⁶ are specific instances of self-restriction and acceptance of interference in a state's affairs.⁴⁷

At the national level, similar technological and economic developments have vitiated old justifications for territorial integrity and

42. See Universal Declaration of Human Rights, *supra* note 20, at 74, art. 15 (right to change nationality); Harris, *Voluntary Association as a Rational Ideal*, in VOLUNTARY ASSOCIATION: NOMOS XI 50, 54 (J. Pennock & J. Chapman eds. 1969) (voluntary association begins as private association; public interest lies in strengthening bonds of voluntary association, diminishing necessity for recourse to force).

43. See Hanrieder, *Dissolving International Politics: Reflections on the Nation-State*, 72 AM. POLITICAL SCI. REV. 1276, 1278-80 (1978) (citizens raising domestic entitlement demands can only be satisfied by extensive international interactions; international redistributive processes increasingly affect national redistributive processes).

44. Although these cooperative schemes often involve regulation of areas and wealth to which no national society had a legitimate prior claim, the communal resolution of secessionist claims is not that different conceptually once it is accepted that a government the population rejects has no legitimate unilateral claim over those people. See, e.g., Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction, G.A. Res. 2749, 25 U.N. GAOR, Supp. (No. 28) 24, U.N. Doc. A/8028 (1970) (exploration and exploitation of seabed area governed by international regime); Convention on the Reduction of Statelessness, U.N. Doc. A/CONF. 9/15 (1961), reprinted in I. BROWNLIE, *supra* note 20, at 170-78 (attempt to reduce statelessness by international agreement); Note, *Thaw in International Law? Rights in Antarctica under the Law of Common Spaces*, 87 YALE L.J. 804 (1978) (Antarctic Treaty recognizes no claims to territorial sovereignty over area, but Antarctica should be fully governed by international law of common spaces).

45. See U.N. CHARTER art. 2, para. 4 (prohibition of use of force in international relations). That section does not, however, outlaw the use of force for furthering the purposes of the United Nations.

46. See U.N. CHARTER arts. 75-91 (international trusteeship system).

47. See Chen & Reisman, *Who Owns Taiwan: A Search for International Title*, 81 YALE L.J. 599, 648-50 (1972) (matters involving interpretation of treaty, territorial conflict, threat to peace, self-determination, and nationality of individuals and groups are of international concern); Loewenstein, *Sovereignty and International Co-operation*, 48 AM. J. INT'L L. 222, 225 (1954) (partial surrender of state sovereignty has positive quality in increasing international interaction and agreement).

rendered smaller entities possible.⁴⁸ On the one hand, a large and secure land base can no longer guarantee military security or ensure economic self-sufficiency; all nations depend on others for defense purposes and for supplies of scarce economic resources.⁴⁹ On the other hand, economic and military groupings need not be congruent with political boundaries; communities serving different purposes can exhibit different degrees of inclusiveness. A larger fabric of economic and military interdependencies allows for the existence of smaller groups within it based on national preferences.⁵⁰ Because self-determination and secession can provide a normative foundation of equality among states, the tension between the desires to be publicly acknowledged and to be politically powerful may be resolved by these concentric circles of political, economic, or military allegiance.⁵¹

Finally, at the individual level, international law has evolved gradually from a state-centered system to one that focuses on the individual. The Helsinki Accords, the recent proliferation of human rights documents,⁵² and the emergence of self-determination as a peremptory norm⁵³ are all products of this development. The recognition that state actions and obligations derive from people's basic responsibilities and

48. See J. HERZ, *THE NATION-STATE AND THE CRISIS OF WORLD POLITICS* 118, 252 (1976) (since technological development destroys protective function large land base was intended to fulfill, nation-state is now free to perform welfare function for group that regards state as legitimate); Hanrieder, *supra* note 43, at 1279 (nationalism can thrive in context of interdependence and interdependence can survive competing nationalisms).

49. See J. HERZ, *supra* note 48, at 114-18 (industrialization and development of atomic weapons have destroyed possibility of national economic self-sufficiency or military invulnerability). Concurrently, the practical unavailability of nuclear weapons for use against small communities and the discovery of synthetic resources and solar energy may permit increasing integrity for small states. See *id.* at 234, 249 (nuclear overkill has paradoxical result of unavailability; industrial technology may provide liberation from economic dependency by removing reliance on natural resources).

50. The European Economic Community is an obvious example: a unit can be bound into NATO's military web and participate in the EEC's economic and monetary structure, while retaining narrower political and cultural loyalties. See W. REISMAN, *PUERTO RICO AND THE INTERNATIONAL PROCESS* 51-108 (1975) (range of international organizations, with varying memberships, available to satisfy political unit's economic, social, cultural, and political needs).

51. See C. GEERTZ, *supra* note 6, at 249 (tension in nationalism between what Mazzini identified as parochial "need to exist and have a name" and what Edward Shils defined as powerful "will to be modern").

52. See, e.g., U.N. CHARTER art. 1, para. 2; art. 55; art. 56 (guarantee of equal rights); *id.* at preamble; art. 1, para. 3; art. 55; art. 73 (human rights provisions); accord, Conference on Security and Co-operation in Europe: Final Act (Helsinki Agreement), 14 INT'L LEGAL MATERIALS 1292-1325 (1975); International Convention on the Elimination of All Forms of Racial Discrimination (1966), reprinted in I. BROWNIE, *supra* note 20, at 237; Convention on the Prevention and Punishment of the Crime of Genocide, 1948, reprinted in *id.* at 116; Universal Declaration of Human Rights, *supra* note 20.

53. See pp. 805-06 *supra*.

rights⁵⁴ has recently led international actors to ignore claims of state order and self-preservation in Uganda and the Central African Empire for the sake of human rights.⁵⁵ Analogously, state demands for self-maintenance and order should not absolutely bar valid secessionist movements that would grant new groups the right to self-determination⁵⁶ and guarantee individuals the freedom to join with others to pursue values they deem desirable.⁵⁷

II. Analyzing Secessionist Claims

Secessionist demands arise in three paradigmatic contexts. First, one region of a state may want to secede to form a separate entity. Attempts at bifurcation have attracted most attention in post-colonial countries, such as the Congo, Nigeria, and the Sudan, and have been explained by the excessive arbitrariness of colonial boundaries, which were often dictated by foreign powers and drawn in total disregard of local circumstances.⁵⁸ Second, a region from one existing state may wish to annex itself to a neighboring state. The Somalis in the Ogaden currently seek such a restructuring of territorial lines.⁵⁹ Third, there may be efforts to amalgamate contiguous areas contained within the boundaries of adjacent states. The Baluch, who inhabit neighboring patches of Pakistan, Afghanistan, and Iran,⁶⁰ and the Kurds, who occupy por-

54. See C. BEITZ, *POLITICAL THEORY AND INTERNATIONAL RELATIONS* 52 (1979).

55. Willingness to contravene the principles of territorial integrity and noninterference for the sake of human rights has recently occurred in Uganda and the Central African Empire (now Central African Republic). See N.Y. Times, Sept. 23, 1979, at A1, col. 1 (French and friendly African nations aided in coup deposing Central African Empire ruler); *id.*, March 6, 1979, at A3, col. 1 (Uganda's Amin calls for counterattack against Tanzanian invasion, yet many African nations support attack against brutal Amin regime).

56. International reaction to the creation of Bangladesh represents a first step toward the realization that secessionist claims can protect important human rights and may require transgressing principles of nonintervention and territorial integrity. See Nanda, *supra* note 32, at 336.

57. Cf. International Covenants on Human Rights, *supra* note 29, arts. 21, 22 (right of assembly, freedom of association, right to join trade union); Universal Declaration of Human Rights, *supra* note 20, arts. 15, 20 (right to change nationality, freedom of association). Although the right to choose a nationality has traditionally arisen in the individual context, a right of secession would in essence grant the freedom to change the nationality of an entire group instead of just an individual.

58. See S. TOUVAL, *THE BOUNDARY POLITICS OF INDEPENDENT AFRICA* 3-17 (1972) (although African borders probably more arbitrary than European ones, problem lies in process of boundary demarcation itself); Post, *Is There a Case for Biafra?* 44 INT'L AFF. 26, 28 (1968) (Nigeria purely creation of convenience for British).

59. See Reisman, *The Case of Western Somaliland: An International Legal Perspective*, 1 HORN OF AFR. 13 (1978). Similarly, plebiscites were held in the Tyrol and Salzburg provinces of Austria in 1921 demanding annexation to Germany. See S. WAMBAUGH, *supra* note 3, at 545-46.

60. See *Turbulent Fragment*, TIME, Jan. 15, 1979, at 32-33.

Secession

tions of Iraq, Iran, Turkey, Syria, and the Soviet Union,⁶¹ are examples of groups whose secessionist claims would occasion such transnational integration. Evaluation of such secessionist claims requires the development and reasoned application of criteria that are politically value-neutral.

A. *The Uses of Criteria*

The merits of a secessionist claim will be weighed by a multitude of world actors including nation-states, multinational corporations, scholars, international organizations, and economic agencies.⁶² Yet it is extremely difficult to measure the desires of groups advancing secessionist claims in the absence of a social-decision procedure that makes those choices manifest. Ideally, issues of national allegiance and group identification would be settled directly through plebiscites.⁶³ The use of voting, however, assumes both an international authority willing to supervise, interpret, and enforce the plebiscite and a state willing to submit itself to such a procedure.⁶⁴ Parties have consistently refused to accept such conditions when issues of sovereignty were at stake.⁶⁵

61. See Edmonds, *Kurdish Nationalism*, 6 J. CONTEMP. HIST. 87 (1971).

62. At times a national court may be asked to choose between discrepant executive policies, which, for example, prohibit political recognition of a group, yet sanction trade arrangements with it. See *Upright v. Mercury Business Machs. Co.*, 13 A.D.2d 36, 213 N.Y.S.2d 417 (App. Div. 1961) (unrecognized East German government found to have juridically cognizable de facto existence for purposes of resolving business dispute with foreign corporation). Economic and financial agencies, such as the World Bank, or multinational corporations, can similarly support or suppress secessionist claims by their actions. See Lemarchand, *The Limits of Self-Determination: The Case of the Katanga Secession*, 56 AM. POLITICAL SCI. REV. 404, 415 (1962) (Belgian financial interests may not have provoked secession, but did provide support that made events feasible); Reisman, *Sanctions and Enforcement*, in 3 THE FUTURE OF THE INTERNATIONAL LEGAL ORDER 310-18 (C. Black & R. Falk eds. 1971) (United Nations, nation-states, diplomats, businessmen, financial corporations, clergy, media, scholars, play roles in international affairs).

63. For the most comprehensive study to date, see S. WAMBAUGH, *supra* note 3, at 485-507 (past problems do not invalidate concept of plebiscites; techniques for conducting them are improving with experience). While plebiscites, referendums, and commissions of inquiry comprise the few available tools for directly ascertaining individuals' desires, plebiscites do not solve the difficult issue of defining who the group is to whom self-determination should be accorded. The parties involved must first accept the right of self-determination and agree on the area whose sovereignty is unsettled. See W. OFUATEY-KODJUE, *supra* note 14, at 35-38 (critique of plebiscite theory on basis of Sir Jennings's aphorism that "[t]he people cannot decide until somebody decides who the people are"). Thus, the definitional criteria suggested in this Note, see pp. 816-20 *infra*, would be necessary even in an ideal world that accepted the principle of secession, in order to conceptualize the group and area to be embraced by a plebiscite.

64. The Saar plebiscite of 1955 is one of the few cases in which states negotiated and consented to a referendum. See H. JOHNSON, *SELF-DETERMINATION WITHIN THE COMMUNITY OF NATIONS* 103-04 (1967).

65. The United Nations has succeeded only in supervising and observing plebiscites that involved terminations of trusteeships, conducted by the administering colonial

Because secessionist claims often arise in contexts that preclude consensual voting processes, criteria must be developed that yield approximately the information one would garner from an open vote. In the absence of central executive, legislative, and judicial organs capable of compelling desired behavior, the role of third parties in shaping and modifying a claim assumes importance.⁶⁶ The private, ad hoc nature of most third-parties' decisions regarding secessionist claims eliminates neither the impact of such choices nor the desirability of arriving at a choice in accordance with disinterested, articulated criteria.⁶⁷

If enough international actors react favorably to a secessionist claim, considerable international pressure can be generated.⁶⁸ Economic sanc-

authorities. *See id.* at 82-90, 172-76 (United Nations did not interfere with power of administering authority to conduct plebiscites in British Togoland, British Cameroons). Significantly, it has failed in attempts to employ plebiscites to resolve territorial disputes. *See id.* at 108-10 (United Nations essentially conceded Indonesian sovereignty over West Irian by allowing that country to control fully the voting process); *id.* at 176-77 (India rejected United Nations proposals to ensure freedom of plebiscite in Kashmir). The recent Zimbabwe/Rhodesia elections—although in the context of majority/minority rule and not secession—may mark a new willingness to permit third parties to supervise elections.

66. Admittedly, there are obvious and important limitations on enforcement in international law, including: (1) the absence of centralized executive, legislative, and judicial organs capable of compelling requisite behavior; (2) unwillingness of states to submit important national interests to international arbitration; and (3) reluctance of international officials and judges to assume competence when states fail to consent. *E.g.*, Case of the Monetary Gold Removed from Rome in 1943, [1954] I.C.J. 19, 33 (refusal to adjudicate alleged international responsibility of Albania to Italy, because of Albania's lack of consent to court jurisdiction). *But cf.* Interpretation of Peace Treaties with Bulgaria, Hungary and Rumania, [1950] I.C.J. 65, 71 (Court has power to interpret legal question in treaty between states even without party's consent to proceedings). The difficulty of forcing a sovereign entity to consent to sanctions and enforcement, and the Court's (or any institution's) unwillingness to involve itself in areas where it may prove ineffectual, for fear of undermining its legitimacy, render the internalization of international norms highly desirable.

67. British oil companies, for example, were faced with a predicament when the Biafrans decreed the interception of rents and royalties normally paid to the Nigerian federal government. The companies' installations were largely in Biafra, thus placing the companies in the position of endangering their investments if they repudiated the Biafran cause, or, if they supported the Biafrans, of jeopardizing their oil concessions granted by the federal government and annoying the pro-federal British government. The companies initially chose to make the payments to Biafra, illustrating the extent to which the decisions and reactions of outsiders necessarily influence the status of any claim for change. *See Higgins, Internal War and International Law*, in 3 *THE FUTURE OF THE INTERNATIONAL LEGAL ORDER*, *supra* note 62, at 113.

68. A state might consent to a plebiscite or referendum for purposes of reasserting its legitimacy, retaining its reputation, and defusing secessionist clamoring. *See* Namibia Advisory Opinion, *supra* note 35, at 65 (separate opinion of Khan, J.) (if South Africa's overwhelming conviction that Namibian peoples truly wanted incorporation into South Africa should emerge in plebiscite results, "South Africa would have vindicated itself in the eyes of the world and in the estimation of the peoples of South West Africa, whose freely expressed wishes must be supreme"). Of course, the plebiscite must be administered

tions, as employed in Rhodesia, may cause a state to alter its behavior.⁶⁹ Concurrently, offers of diplomatic asylum⁷⁰ and a state's willingness to harbor members of the secessionist group within its territory may aid those advancing a claim.⁷¹

The use of practical criteria for judging secessionist claims may also serve to improve minority rights by indicating accommodations or structural rearrangements short of secession.⁷² However, secession has no less sound a theoretical foundation than less drastic realignments and should be considered a viable option.

B. *Defining and Resolving Secessionist Claims*

Third parties must participate in the definition of a secessionist claim since whatever process brings it to their attention is not necessarily representative. Before a demand for change can be resolved it therefore must be identified as an appropriate focus for a possible secessionist outcome. Threshold factors locate such claims: they initiate the decisionmaking process without constituting significant intervention in the affairs of the existing state.⁷³ Having ascertained the

by a neutral third party, thus circumventing the state's power to phrase the plebiscite question in a rigid, biased form. Cf. N.Y. Times, March 4, 1979, § 4, at 1, col. 4 (upcoming Iranian referendum will pose one loaded question: Should Iran return to a monarchy or have an Islamic republic?).

69. See S.C. Res. 276, 25 U.N. SCOR (1529th mtg.) 1-2, U.N. Doc. S/INF/25 (1970) (appealing to states not to render financial or other economic aid to illegal regime in South Africa); S.C. Res. 217, 20 U.N. SCOR (1265th mtg.) 8-9, U.N. Doc. S/INF/20/Rev. 1 (1965) (same with respect to Southern Rhodesia). Economic interdependence, see pp. 810-11 *supra*, has increased the ability of outsiders to influence secessionist claims without contravening the U.N. Charter norm in art. 2, para. 4, prohibiting the use of force against the territorial integrity of a state. Cf. Hanrieder, *supra* note 43, at 1280 (source of power in contemporary global politics lies more in economic access and presence than in political acquisition and rule). Significantly, U.N. Charter art. 2, para. 4 does not prohibit intervention for purposes consistent with the Charter. If a state were exercising violence against a secessionist group, intervention for self-determination and humanitarian purposes would be permissible, as the intervention into Bangladesh illustrated.

70. See Haya de la Torre Case, [1951] I.C.J. 70; Asylum Case, [1950] I.C.J. 265 (Marxist Haya de la Torre sought refuge in Colombian embassy after rebellion in Peru—a situation similar to that a secessionist claim might present).

71. Cf. G.A. Res. 2787, 26 U.N. GAOR, Supp. (No. 29) 82-83, U.N. Doc. A/8429 (1971) (urging support for Zimbabwe, Namibian, Angolan, Mozambique and Palestinian peoples in their struggles for self-determination, thereby recognizing groups involved).

72. A range of structural possibilities short of secession is possible, including grants of regional autonomy; the preservation of cultural institutions such as courts, churches, and universities; or constitutional guarantees of language rights. See, e.g., L. BUCHHEIT, *supra* note 31, at 158 (Iraqi-Kurdish Peace Agreement of March 1970, promised extensive protection for Kurdish national rights and identity); Post, *supra* note 58, at 28-29 (1968) (Nigeria's original constitution contemplated a loose, three-region federal structure).

73. See Reisman & Suzuki, *Recognition and Social Change in International Law: A Prologue for Decisionmaking*, in TOWARD WORLD ORDER AND HUMAN DIGNITY 426 (M. Reisman & B. Weston eds. 1976) (advantages of considering claim include more objective

existence of a secessionist claim, these factors should be reinvoled at a more rigorous level of scrutiny to evaluate the merits of the claim.

1. *Associational Desire*

The decisionmaker must begin by distinguishing claims for association, group identification, and separation, from demands for other internal political and economic rearrangements. Several General Assembly resolutions, as well as article 73 of the United Nations Charter, offer guidelines for that determination.⁷⁴ The documents suggest that separatist claims may stem from cultural, ethnic, or geographic differences. They also index the positive factors of self-government—freedom of choice, freedom to modify one's political status, freedom from discriminatory social legislation—which, if contravened, would provide a basis for a secessionist claim. Although the guidelines are designed for colonial situations, to the extent that any state does not fulfill the enumerated obligations of ensuring political, educational, and social advancement,⁷⁵ a separate group may be expected to develop in a noncolonial context as well.⁷⁶

Adverse discrimination on the part of the state further suggests that it regards the group in question as a separate, subject people.⁷⁷ Because a sense of disaffection and separateness is insusceptible of measurement, evidence of adverse discrimination by the government may serve as an objective proxy.⁷⁸ Finally, group attempts to bring claims to a regional or international body provide evidence supporting a secessionist claim.

view of two-sided situation, tending to make future choice based on merits, not political prejudice; possibility of pressing two parties toward incorporating international norms into their resolution of conflict); cf. Falk, *Janus Tormented: The International Law of Internal War*, in *INTERNATIONAL ASPECTS OF CIVIL STRIFE* 207 (J. Rosenau ed. 1964) (existing system's unregulated, subjective characterization of status of parties in conflict leads to inability to decipher nature of claims at stake).

74. See, e.g., U.N. CHARTER art. 73 (non-self-governing territories); Res. 1541(XV), *supra* note 11 (guiding factors in determining whether territory is non-self-governing); Res. 742, *supra* note 19 (factors indicative of attainment of independence, free association, other freely determined statuses).

75. See U.N. CHARTER arts. 73, 76.

76. See K. DEUTSCH, *supra* note 6, at 52-59 (tendency of separate group to continued self-expression to compensate for lack of cultural and economic links with ruling group).

77. See Res. 1541(XV), *supra* note 11 (defining prima facie evidence of discriminatory situations); Namibia Advisory Opinion, *supra* note 35, at 31, 57 (condemning "distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, colour, descent or national or ethnic origin"); cf. Declaration on Friendly Relations, *supra* note 27, at 124 (requiring governments to represent, in compliance with the principles of equal rights and self-determination, "the whole people belonging to the territory without distinction as to race, creed or color").

78. In Bangladesh this discriminatory treatment went so far as to fulfill a pattern of colonial exploitation as defined by Res. 1541(XV), *supra* note 11, which, according to some authorities, justified secession. Cf. Choudhury, *Bangladesh: Why It Happened*, 48 INT'L AFF. 242 (1972).

Although the United Nations and International Court of Justice do not accord status to nonstates,⁷⁹ many groups have nevertheless undertaken to air demands in these forums,⁸⁰ and will continue to do so.

Ultimate recognition of a secessionist claim is warranted if the associational desires are shared by a majority of the group. Existence of a broad associational desire is essential, for it reflects the underlying purposes of self-determination—increased personal choice and political participation. Similar interests and goals should unite the leaders articulating the claim and the population involved.⁸¹ Linguistic, cultural, religious, or ethnic homogeneity, although evidence of group cohesion, are not dispositive.⁸² These factors should serve only to reinforce a subjective and psychological claim to exist as a unit, not to contradict a perceived desire for political association. For what is salient to a people may change over time: religion or shared history may have traditionally functioned as a bonding force, whereas language or political beliefs may account for feelings of identification at a later point.⁸³

Limitations exist upon any observer's ability to scrutinize the nature and range of a demand for association without the benefit of a direct expression of opinion by the population involved.⁸⁴ Outsiders may tend

79. See U.N. CHARTER art. 4 (United Nations membership open only to peace-loving states); STATUTE OF THE INTERNATIONAL COURT OF JUSTICE art. 34(1) (only states may be parties before court).

80. See p. 821 *infra*. Recognition of nonterritorial actors and protostates has been slow in coming, however. See G.A. Res. 3210, 29 U.N. GAOR, Supp. (No. 31) 3, U.N. Doc. A/9631 (1974) (inviting the P.L.O. to participate in the General Assembly plenary debate on the Palestine question); 76 DEP'T ST. BULL. 335 (1977) (United States position finally begins to approximate international trend toward recognition of P.L.O.). Ideally, provisions for extending standing before the United Nations and the International Court of Justice to peoples and nonterritorial actors should be instituted, thus mitigating the condition of isolation. Because international relations function according to norms of reciprocity, however, there may exist a tacit mutual agreement among states not to confront such potentially disruptive claims.

81. This concern was a critical issue in Biafra: were the leaders, although claiming to speak for the territorial unit of Eastern Nigeria, only representing the Ibo peoples? Compare Panter-Brick, *The Right to Self-Determination: Its Application to Nigeria*, 44 INT'L AFF. 254, 265 (1968) (yes) with Nayar, *Self-Determination Beyond the Colonial Context: Biafra in Retrospect*, 10 TEX. INT'L L.J. 321, 326 (1975) (no).

82. Compare note 14 *supra* (Wilsonian assumption that nationalities, in form of ethnic groups, are phenomenological reality) with Suzuki, *supra* note 11, at 786-87 (recognizing primacy of subjective, psychological criteria over sociological, geographic, political, or historical criteria).

83. Cf. Advisory Opinion on Western Sahara, [1975] I.C.J. 12, 68 (historical ties, based largely on religious and legal interaction, insufficient to sustain Morocco's and Mauritania's claims over Western Sahara; inhabitants to be consulted about present desires for association).

84. See p. 813 *supra* (plebiscites). Of course, in countries in which public opinion is relatively unrestricted and communications propaganda-free, an observer can obtain a fairly accurate picture of public sentiment, and the need to resort to the criteria is correspondingly diminished. These countries are likely to undertake plebiscites as well, as in the cases of Scotland and Wales.

to overlook or distrust the formation of nations like Switzerland that lack traditional indicia such as cultural or linguistic homogeneity.⁸⁵ Nevertheless, social scientists have identified some institutional contexts—such as school systems and displays of official authority—in which symbolic behavior reflecting clashing group loyalties classically occurs.⁸⁶ Observation of such affiliational conflict can aid in measuring the extent and fervor of a group's desires.

2. *Distinct Geographic Territory*

A second indicium of a secessionist claim is the presence of an identifiable land base.⁸⁷ Existence of a geographic base can help distinguish between territorial groups seeking to defend particular group values, and political or socially disaffected citizens with no link to the nation-state system.⁸⁸ Moreover, the intensive social networks and exchange of goods and services required by a community presuppose a physical base.⁸⁹

Although a group advancing a secessionist claim might have an identifiable land base, a claim would not acquire legitimacy unless the seceding and remaining states possessed viable territorial foundations. Viability is not synonymous with undisturbed territorial integrity; rather, it is an environmental prerequisite for ensuring a group's continuing right to self-determination.⁹⁰

The recent proliferation of "ministates"⁹¹ has underscored the difficulties that plague small, unstable entities.⁹² Nevertheless, global

85. *But cf.* K. DEUTSCH, *supra* note 6, at 16, 71 (close study of technological developments, patterns of trade and communication reveal Swiss state emerging from thirteenth century onwards).

86. *See* Geertz, *The Integrative Revolution*, in *OLD SOCIETIES AND NEW STATES* 124-27 (C. Geertz ed. 1963) (parapolitics is more virulent form of clashing public identities and ethnic aspirations that operates alongside usual politics of party and Parliament).

87. *See* Crawford, *supra* note 18, at 112 (case of Israel illustrates that people require territory to become state but precise delimitation of boundaries not necessary).

88. *See* Reisman, *Private Armies in a Global War System: Prologue to Decision*, 14 VA. J. INT'L L. 1, 39 (1976) (critical distinction between bandits or outlaws and private groups with territorial ambitions).

89. *See* note 6 *supra*; K. DEUTSCH, *supra* note 6, at 15-80.

90. While a territorial base is necessary for a state-like community, the question of what constitutes minimum viability is difficult to answer. Furthermore, whether a nation is dependent upon natural wealth and therefore has a right to it depends on one's temporal and political perspective: Is Zaire presently exploiting Katanga's wealth or would Katanga impermissibly undermine Zaire's viability by seceding?

91. *See* E. PLISCHKE, *MICROSTATES IN WORLD AFFAIRS* preface (1977) (ministates and microstates are both designations for states with populations less than 300,000).

92. *See* W. REISMAN, *supra* note 50, at 52 (costs of maintaining United Nations mission, contribution fees, financial burdens of diplomatic relations and communications can overwhelm tiny states).

interdependence has vitiated traditional criteria of sovereign self-sufficiency and independence and facilitated the survival of very small units.⁹³ Thus the possibility of creating a land-locked entity, or of an emerging nation appropriating a formerly shared natural resource, should not automatically defeat a self-determination claim.⁹⁴ Weakening the surviving states, however, can aggravate future foreign intrusion into their affairs. Such undermining of the remaining states' future ability to ensure self-determination must be balanced against the secessionist claim; resort to the right of secession is precluded if its consequences contradict the very values being asserted.

3. Violence

Violence on the part of either the state or the secessionist group unquestionably serves to draw outsiders' attention to a problem area.⁹⁵ Insofar as violence crystallizes lines between opposing groups, it aids in defining the geographic and psychological bounds of a separatist claim. Violence by the state often indicates the ruling group's fear of the self-determination demands and its refusal to permit free choice;⁹⁶ when exercised by the secessionists it may offer further evidence of the existence of a group will.⁹⁷

Still, violence plays an ambivalent role in the final evaluation of secessionist claims. Although violence directed against a portion of the population by the existing state may support a secessionist claim,⁹⁸ such violence cannot be regarded as a necessary element of a claim, for that would allow a state to define who may secede by resorting to, or refrain-

93. See p. 811 *supra*; 22 U.N. GAOR, Supp. (No. 1A), U.N. Doc. A/6701/Add.1 at 20 (1967) (Secretary General U Thant's Annual Report) (accepting legitimacy of even smallest territories attaining independence through self-determination); W. REISMAN, *supra* note 50, at 60 (universalism of United Nations admissions policy).

94. Compensation schemes or joint development projects for resource exploitation, and the creation of land corridors to seaports should be considered, and may be potent bargaining chips in resolving secessionist claims as well. See note 125 *infra*.

95. Violence not only attracts attention and concern, but may substantially affect the future of third parties. See, e.g., M. MOSKOWITZ, *THE POLITICS AND DYNAMICS OF HUMAN RIGHTS* 145 (1968) (massacre of Watusi by Bahutus in Ruanda determined fate of relations between two tribes in neighboring Burundi).

96. See Ijalaye, *Was "Biafra" at Any Time a State in International Law?* 65 AM. J. INT'L L. 551, 553-54 (1971) (grants of recognition to Biafra stressed indiscriminate massacre of civilians).

97. See *Namibia Advisory Opinion*, *supra* note 35, at 69-70 (separate opinion of Amoun, J.) (Namibian people, whose existence and unity Court recognized, asserted international personality through violent struggle for freedom, just as Poles, Czechs, and French did in World War I).

98. Supporters of Bangladesh's and Biafra's secessions justified their positions by pointing to the violence exercised against the secessionists. See notes 32 & 96 *supra*.

ing from, force.⁹⁹ Similarly the use of violence by secessionists should not automatically justify buttressing the existing order, for it may indicate a genuine associational desire and help transform an unstable situation into a more equitable new order.¹⁰⁰ Ultimately, decision-makers must judge the extent to which any restructuring would promote the longrun achievement of freedom of association and respect among groups.¹⁰¹

III. Application of the Criteria to the Ogaden

The dispute over Western Somaliland, a grazing area between the Ethiopian highlands and the arid plains of the Somali Republic, involves a confrontation between Ethiopian claims to territorial integrity and Somali claims for self-determination. Although Ethiopia currently exercises jurisdiction over the area,¹⁰² it is inhabited almost exclusively by Somali people.¹⁰³ Since 1897 the area has been the focus of varying border agreements and attempts at boundary demarcation between Italy, Britain, France, and Ethiopia.¹⁰⁴ The present conflict, rooted in a dispute over the 1954 Anglo-Ethiopian Agreement, has been marked by continuing outbreaks of war and a deadly minuet between the superpowers, who have exacerbated the confusion by switching allegiances.¹⁰⁵ This claim by a minority to secede from an existing state

99. This is one of the major problems with Buchheit's method of measuring the merit of a secessionist claim with respect to present and future disorder. See L. BUCHHEIT, *supra* note 31, at 238-45. Oppression is not always directly correlated with violence. Cf. McDougal & Reisman, *Rhodesia and the United Nations: The Lawfulness of International Concern*, 62 AM. J. INT'L L. 1, 7-13 (1968) (aggression is not required as constituent element of "threat to the peace" as defined in U.N. CHARTER art. 39).

100. See Namibia Advisory Opinion, *supra* note 35, at 70 (separate opinion of Ammoun, J.) (struggle of peoples one of primary factors in achieving recognition of self-determination as international right). Admittedly, violence by secessionists may indicate intolerance of other peoples, but third parties should be wary of holding seceding groups to higher standards than those observed by existing states. Ultimately, the proposed criteria could be invoked on behalf of new oppressed minorities to prevent their right to self-determination or secession from being transformed into mass expulsion, as may have happened to the Biharis in Bangladesh. See Zayas, *International Law and Mass Population Transfers*, 16 HARV. INT'L L.J. 207, 245, 250 (1975).

101. Responsible decisionmaking, perhaps unfortunately, is one of the few means of tempering an absolute ethic like self-determination. See MAX WEBER, *Politics as a Vocation*, in FROM MAX WEBER: ESSAYS IN SOCIOLOGY 126-27 (H. Geertz & C. Mills eds. 1973).

102. See 161 BRITISH AND FOREIGN STATE PAPERS 1954, at 93-97 (Foreign Off. ed. 1963) (1954 Anglo-Ethiopian Treaty grants "full and exclusive sovereignty of Ethiopia over the territories").

103. See J. DRYSDALE, *THE SOMALI DISPUTE* 7-9 (1964) (Somalis have occupied, for at least last 200 years, 370,000-square-mile triangular area of Horn of Africa).

104. See Latham-Brown, *The Ethiopia-Somaliland Frontier Dispute*, 5 INT'L & COMP. L.Q. 245 (1956).

105. See T. FARER, *WAR CLOUDS ON THE HORN OF AFRICA* 138-43 (1976) (describing escalation of American arms to Ethiopia and Soviet balancing strategy with Somalia in

and join a neighboring state will illustrate the operation of the proposed criteria.

A. *Associational Desire*

The Somalis in the Ogaden have presented associational demands by their indisputable opposition to Ethiopian control and continued desire to be linked to a greater Somalia.¹⁰⁶ When the British decision to abandon the Ogaden to Ethiopia was announced in 1947, rioting broke out and the Somali clans petitioned the British to convey their protests to the United Nations General Assembly.¹⁰⁷ Somali demands for unification intensified throughout the 1950s and in 1957 the National United Front¹⁰⁸ attempted to have the issue of Britain's right to cede the territory debated before the United Nations and brought before the International Court of Justice.¹⁰⁹

The Somalis are an unusual phenomenon in Africa, knit together by linguistic, cultural, religious, historic, racial, and even economic ties.¹¹⁰ In contrast, relations between the Ogaden Somalis and the Ethiopian state evince a pattern of oppression and discrimination. In conformity with its policy of assimilation as a tool for political control, the Ethiopian government has premised Somali social advancement on their acceptance of the Amharic (Ethiopian) language; official policy has repressed political activity as well as Somali nationalist senti-

1976). Since 1976, the United States and Soviet Union have switched sides, with the Ethiopian government breaking military ties with the United States in April 1977, the Soviets appearing to opt for the Ethiopians in the summer of 1977, the Somalis renouncing the 1974 Friendship Treaty with the Soviets in November 1977 and the United States resuming aid to Somalia in December 1977. See N.Y. Times, April 24, 1977, at A1, col. 1 (United States facilities ordered closed by Ethiopian Regime); *id.*, May 7, 1977, at A3, col. 2 (Ethiopia and Soviets sign cooperation agreements); *id.*, Nov. 19, 1977, at A1, col. 1 (Somalia expels Soviet advisers).

106. See I. LEWIS, *THE MODERN HISTORY OF SOMALILAND* 107 (1965) (Somali opposition to Ethiopian jurisdiction surfaced early in 1930s).

107. See *id.* at 130 (news of forthcoming Ethiopian control provoked rioting and petition by all clans of Ogaden and Reserved Areas to British authorities to protest surrender of country).

108. The National United Front, formed in 1955 for the purpose of regaining the Haud, was a broad-based association embracing many Somali political parties and organizations. See S. TOUVAL, *SOMALI NATIONALISM* 104 (1963).

109. See J. DRYSDALE, *supra* note 103, at 78-79, 86 (maintaining that "the British Government should have had the courage to take the dispute over nationality to the International Court of Justice, where the validity or otherwise of [1954 Agreement] and previous agreements with Ethiopia could have been settled by the Court concurrently and indirectly."); I. LEWIS, *supra* note 106, at 151-52 (British refusal to sponsor Somali appeal to United Nations to refer dispute to International Court of Justice).

110. See I. LEWIS, *supra* note 106, at 1 (Somalis one of largest single ethnic blocks in Africa living in continuous occupation of territory); S. TOUVAL, *supra* note 108, at 20-26 (1963) (Somalis culturally and linguistically coherent, and distinct from neighboring tribes).

ment and cultural expression.¹¹¹ Although a few schools and medical facilities have been introduced in the Haud and Ogaden areas, equal treatment has been systematically denied.¹¹²

The strong ties between the political groups demanding Somali unification and all segments of the Somali population are decisive evidence of a majority desire for secession.¹¹³ The majority's identifications and aspirations have been clear from the original Somali National League/Somali Youth League Conference in 1940,¹¹⁴ through the universal outrage in reaction to the 1954 Anglo-Ethiopian border agreement,¹¹⁵ to the present willingness to hold a plebiscite.¹¹⁶ The objective indicia of Somali cohesion simply reinforce this subjective desire for unity.

B. *Territorial Base and Viability*

The Ogaden is a coherent geographic area peopled almost exclusively by Somalis.¹¹⁷ The interdependence between the Somali social-economic structure and the environment,¹¹⁸ as well as the clear difference between the Ogaden plains and the Ethiopian highlands, makes the area relatively simple to demarcate.¹¹⁹

Furthermore, resolution of the Ogaden secession claim is devoid of

111. See J. DRYSDALE, *supra* note 103, at 70-71 (Somali Youth League, institutional expression of Somali nationalism, prohibited since Ethiopia began administering Ogaden in 1948); T. FARER, *supra* note 105, at 83 (treatment of Muslims by Ethiopian officials and police reflected Emperor's distaste of cultural pluralism and his use of assimilation to preserve integrity of Ethiopian state); I. LEWIS, *supra* note 106, at 182 (advancement predicated on knowledge of Amharic).

112. See I. LEWIS, *supra* note 106, at 182; Reisman, *supra* note 59, at 20.

113. See notes 107 & 108 *supra*.

114. See SERVICES D'INFORMATION DU GOUVERNEMENT SOMALI, LA PENINSULE DE SOMALIE 136 (1962) (1940 Conference of organizations with delegates from all Somali regions found 85% of population desiring single Somali nation to be administered initially by Four Powers in U.N. Trusteeship Council).

115. See J. DRYSDALE, *supra* note 103, at 75 ("All political parties in the Protectorate combined in a National United Front and sent a delegation . . . to Britain, and subsequently to the U.N., to protest.")

116. See SERVICES D'INFORMATION DU GOUVERNEMENT SOMALI, *supra* note 114, at 10 (seeking revision of frontiers based on principle of self-determination); cf. S. TOUVAL, *supra* note 58, at 61-98, 212-45 (Somalia has unremittingly pressed claim for boundary revision at African Conferences and before United Nations, suggesting belief that its commitment to unity would be vindicated in plebiscite). But cf. Spencer, *A Reassessment of the Ethiopian-Somali Conflict*, 1 HORN OF AFR. 23, 27 (1978) (evidence of numerous Galla and Negroid groups living in Somalia should logically force Somalia to compromise her demand for plebiscite).

117. See note 103 *supra*; T. FARER, *supra* note 105, at 49-52 (Ogaden unified grazing area more integral to Somalia than Ethiopia in geographical and ecological sense).

118. See J. DRYSDALE, *supra* note 103, at 78-80 (dependency of Somali herdsmen on Haud, Ogaden, and Reserved Area for pasturage and nomadic cycle).

119. See I. LEWIS, *supra* note 106, at 1 (arid Somaliland forms well-defined geographic unit).

concerns for the viability of the emerging unit; annexation to an existing state virtually assures continued existence. Ethiopia, on the other hand, never maintained a continuous presence in the Ogaden before the 1930s¹²⁰ and only exercised effective administrative control over the area after World War II.¹²¹ The Ogaden is not vitally integrated into the Ethiopian state by economic, communication, or transportation links.¹²² Ethiopia thus could not plead unviability if the Ogaden were excised from its territory.¹²³ Though Ethiopia's fixation on frontiers as needed protection against invasion¹²⁴ and its claim to oil deposits in the Ogaden should not be trivialized, the right to secession should prevail over historic fears, especially when accommodating solutions can be devised.¹²⁵

C. Violence

Finally, violence, on the part of both the Ethiopian government and the Somali nomads, has been unceasing.¹²⁶ This violence has not only indicated that the Somalis are handled as a distinct, oppressed group, but also has embroiled the superpowers in the conflict and ultimately has undermined the independence of both Ethiopia and Somalia.¹²⁷

120. See J. DRYSDALE, *supra* note 103, at 56 (Ogaden barely occupied by Ethiopian authorities before Wal Wal incident in 1934); Spencer, *supra* note 116, at 24 (after government asserted control over area in 1930s, settled Ethiopian farmers had scant incentive to leave cool, agricultural lands for nomadic life of Ogaden Somalis).

121. Britain, in agreements with Ethiopia in 1942 and 1944, recognized full Ethiopian sovereignty over the Ogaden, Haud, and Reserved Area, but retained British administration over the Ogaden under a military convention until 1948, and in the Haud and Reserved Area until the 1954 Agreement was concluded. See J. DRYSDALE, *supra* note 103, at 60-66, 70-71, 75. For the text of these treaties, see SERVICES D'INFORMATION DU GOUVERNEMENT SOMALI, *supra* note 114, at 204 app., 209 app.

122. See Spencer, *supra* note 116, at 26 (Ethiopians have had little inclination to visit or live in Ogaden and have done almost nothing to improve it).

123. Cf. T. FARER, *supra* note 105, at 65 (independent Ethiopian state existed for 2,000 years without need for Somali-occupied territory).

124. See Spencer, *supra* note 116, at 23 (Ethiopia's wealth and strategic position have made it focus of continual historical attacks triggering security fear that demands strong frontiers and Red Sea outlet).

125. This issue perhaps could be resolved by an arrangement for joint development and exploitation of these resources, or by compensating the Ethiopians for loss of prospective revenues. See T. FARER, *supra* note 105, at 147-48 (joint title); Spencer, *supra* note 116, at 26 (advocating compensation, which would also neutralize demonstration effect of successful secession).

126. See J. DRYSDALE, *supra* note 103, at 84-85 (quoting London Times staff correspondent writing in 1956: "Individual tribesmen have been brutally treated (it is not possible to describe the intensely painful and humiliating torture) and Ethiopian police have attacked the tribal women"); Washington Post, July 30, 1977, at A10, col. 1 (Ethiopia and Somalia battle over disputed Ogaden region).

127. See Katz, *Children's Revolution: A Bloodbath in Ethiopia*, ROLLING STONE, Sept. 21, 1978, reprinted in 1 HORN OF AFR. 3, 9 (1978) (Ethiopians believe Soviets have "stolen" their coffee crop for years to come in exchange for arms).

The recurrent warfare indicates the intensity and commitment of the Somali desire for unification and suggests that a solution short of secession may be infeasible.¹²⁸ Moreover, a government based on the will of the people could help to restore internal stability to the region.¹²⁹ Soviet and American contrapuntal strategies might be defused and those countries' presences reduced, thus permitting greater internal self-determination for the states emerging on the Horn.¹³⁰

Thus, the Ogaden illuminates the fallacy of simply equating territorial integrity with stability, and self-determination with disruptive change; in this instance, adherence to territorial integrity has promoted disorder whereas a right of secession could well occasion future stability and peace.

128. Furthermore, the ethnic homogeneity of the Somalis obviates the need for judgments as to how they would treat minority groups trapped within the new state, *see* S. Touval, *supra* note 108, at 11-13, and their egalitarian social structure and past conduct provide some evidence that Somalia would act responsibly as a state. *See* I. Lewis, *supra* note 106, at 10-17; S. Touval, *supra* note 58, at 84, 112.

129. The Ethiopians would also be able to redirect desperately needed resources to their domestic problems; the Ogaden crisis, rather than galvanizing popular support for the government, has tragically undermined social advancement and cohesion. *See* Katz, *supra* note 127, at 8, 9.

130. *See* N.Y. Times, Jan. 11, 1979, at A14, col. 1 (West providing economic assistance to Somalia yet refraining from arms shipments; Soviets might militarily restrain Ethiopia and induce country to resolve dispute with Somalia). *But cf.* Spencer, *supra* note 116, at 26-30 (concluding that resolution of the Ogaden problem would contribute to internal stability in the Horn, but would be meaningless in terms of precluding foreign intervention since great power interests are focused more on control of Gulf of Aden, Red Sea, and straits of Bab el Mandeb).