Self-Determination in Conflict Prevention and Resolution

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Liechtenstein Institute on Self-Determination at Princeton University

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Introduction

The Liechtenstein Initiative on Self-determination aims to promote ways to address self-determination claims while respecting the territorial integrity of states. The initiative's main goal is to prevent conflict between governments and communities that seek a greater measure of governance over their own affairs, with an emphasis on solutions that do not lead to secession and independence, but instead ensure appropriate levels of self-governance. In service of this goal, the approach of the Liechtenstein Initiative highlights the need for early and ongoing dialogue between governments and communities, and puts forward possible solutions for them to pursue together in order to create and sustain peaceful societies.[1]

In 2016 the Permanent Mission of Liechtenstein to the United Nations in New York, together with the Liechtenstein Institute on Self-Determination at Princeton University (LISD), convened a meeting in Triesenberg, Liechtenstein, entitled "*Reconciling Self-Determination and Territorial Integrity: Models of Self-Governance as Tools to Promote Peace and Stability in Europe*". This conference was convened to discuss ways of realizing a community's desire for self-determination while preserving the territorial integrity of states, with specific reference to conflicts in Eastern Europe.[2]

While affected peoples and experts continue to invoke self-determination in the context of a wide range of ongoing disputes or forms of governance, discussion of self-determination claims at the United Nations focus almost exclusively on decolonization and secession claims. In addition, states often see communities that seek a greater measure of self-governance as internal threats to their sovereignty and territorial

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[1] Liechtenstein does not challenge the idea that situations may exist that can only be addressed in a manner leading to independence, but notes that this is outside of the scope of our initiative.

[2] Circulated as A/70/955–S/2016/547, "*Letter dated 15 June 2016 from the Permanent Representative of Liechtenstein to the United Nations addressed to the Secretary-General*", 23 June 2016. Accessible at http://undocs.org/A/70/955.

integrity, and consequently are likely to refuse dialogue and resist calls to involve external actors or mediators in the process of addressing conflicts with those communities. However, there exists a relatively rich history of cases in which states have successfully addressed self-determination claims without leading to independence and secession, from which other states facing such challenges may benefit. Mediators have often been key to these successes, and many of them have significant experience of facilitating agreement on issues that can help prevent or resolve self-determination conflicts. The Liechtenstein Initiative will draw on mediators' experience and expertise to develop guidelines that are explicitly aimed at addressing self-determination conflicts, with the aim of reconciling self-determination claims with the territorial integrity of states.

The UN Secretary-General has placed strong emphasis on conflict prevention and enhanced UN work in the area of mediation. Preventive diplomacy provides an important opportunity to consider how to address self-determination conflicts at the earliest possible stage. To do so requires a better understanding of the relationship between self-determination and conflict, and of the potential for sustainable solutions to these conflicts, which are often founded on deep and intractable divisions.

In light of these developments, the Permanent Mission of Liechtenstein to the United Nations in New York, together with the Liechtenstein Institute on Self-Determination at Princeton University (LISD), convened a further meeting in Princeton in December 2018, in order to discuss the linkages between self-determination and conflict, in particular with regard to conflict prevention. The outcomes of this meeting are summarized below.

Key Points:

- Self-determination should not be interpreted as necessarily resulting in independent statehood or secession. Rather, self-determination should be understood to encompass expressions of self-governance, autonomy and self-government, as it is used, for example, in the area of indigenous peoples' rights. The Liechtenstein Initiative on Self-determination focuses on forms of self-governance as a way to apply the right of self-determination, that can reconcile self-determination with the territorial integrity of states.
- The international community lacks a set of legal and practical tools for addressing self-determination outside of the colonial context. Although there has been recent progress on the right of self-determination in the context of indigenous rights, this progress has not extended to other contexts.
- The international community has also under-diagnosed the role of self-determination claims as a driver of conflict, which can have negative consequences for efforts to foster sustainable peace. Practitioners and mediators should be encouraged to identify self-determination conflicts in order to comprehensively address the community grievances that underlie them.
- One important avenue in the prevention of self-determination conflicts is ensuring minority rights. Successful, inclusive nation-building can help to prevent aspirations at self-governance from coalescing to dimensions threatening the territorial integrity of states.
- An appropriate level of self-governance consulted and agreed between the state and a community is the most promising option for resolving self-determination conflicts, as it respects

the principle of territorial integrity and in many cases can meet the needs of communities without secession. However, in practice, these arrangements can suffer from practical deficiencies, a lack of implementation, or prioritization of hard security issues above longer-term priorities, such as human rights. Creative solutions and expertise are needed to address these issues.

<u>**Summary of Discussions**</u>

Discussions cut across the following thematic areas:

- Definitional and conceptual issues surrounding self-determination
- Prevention and resolution of self-determination conflicts
- Selected issues in addressing self-determination conflicts
- Engagement with states and affected communities
- Future steps for the initiative

Discussions took place under the Chatham House Rule. Further details can be found in the following sections.

<u>**Definitional and Conceptual Issues**</u>

Self-determination post-secession

One overarching theme of discussions was the need to consider expressions of self-determination beyond the context of secession. Participants noted that self-determination in terms of secession only constitutes *jus cogens* in the context of decolonization; while there are still cases in which this is relevant, notably the UN's non-self-governing territories, the vast majority of today's self-determination claims were not made on the basis of decolonization. Therefore participants identified a need to put forward other options for those advancing self-determination claims. 'Self-determination' was understood to include a range of constitutional outcomes, including arrangements that may be described as forms of federalism, autonomy, and self-governance. Going forward, it would be important to make clear that the Liechtenstein Initiative on Self-determination was not aimed at encouraging secession, but at finding solutions that would address the legitimate aspirations of self-determination while preventing conflict. One example that was raised as challenging the prevailing concept of self-determination was in the area of indigenous peoples' rights, as the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) associates self-determination with rights to autonomy or self-government in matters relating to their internal and local affairs.

Who exercises self-determination

This discussion of what self-determination means in practice intersects with the question of who can exercise that right. During the colonial period, the groups exercising self-determination were limited to colonies or subdivisions of colonies, or particular territories inhabited by an identifiable ethnic group, referred to as a 'people' in the twin UN Human Rights Covenants of 1966. It was noted that today self-determination was most commonly invoked as a rhetorical device, generally by groups bound either by territory or ethnicity, and primarily outside of the colonial context.

The ongoing effects of the historical links between self-determination, ethnicity, and borders were also discussed. One speaker noted that since at least 1919, attempts to bring about solutions to self-

determination conflicts had often codified divisions along ethnic lines, which had driven both implicit and explicit population transfer into ethnically-defined territories, and in some cases had fueled further conflict. Participants also noted the existence of minorities within communities seeking self-determination (the 'minority-within-minority-problem'), and that many post-colonial states were not created solely on ethno-national grounds, but as subjects—rather than objects—of law. It was also important to remember that ethnicity was not a fixed concept, but one facet of identity that may have differing levels of importance at different times. Going forward, participants suggested that it would be important to avoid mediated 'solutions' to self-determination conflicts that solely focused on divisions based on ethnicity. Such solutions would further entrench ethnic divisions inside states, disenfranchise minorities that were not included in the groups considered by the agreement, implicitly encourage population transfer, and provide implicit support for those who wish to invoke self-determination on the basis of ethnic nationalism in the future.

The role of international law

There was widespread discussion about the relationship of international law to present-day self-determination cases. It was noted that, historically, self-determination as associated with decolonization was seen as an emancipatory concept, codifying the right of groups to govern themselves, freeing them from external repression, and providing for their self-representation. From a state's perspective, today one can instead see the legal framework surrounding self-determination as a way to manage order and change in the representation of communities. Another participant noted that, from the perspective of those seeking a greater degree of self-determination, international law may appear to be a tool used by states to frustrate their political ambitions.

Finding ways within international law to address today's self-determination claims is key to the Liechtenstein Initiative on Self-determination. In particular, the initiative emphasizes the possibility of various forms of self-governance short of secession through which the right of self-determination can be exercised.

Participants also discussed the extent to which self-determination exists as a workable right that could be claimed by a defined group. One speaker considered the practice of the Human Rights Committee in this context. Although the Committee has avoided hearing claims based on Article 1 of the International Covenant on Civil and Political Rights on the right of peoples to self-determination, it has been willing to hear claims under Article 27, which refers to the rights of persons belonging to ethnic, religious or linguistic minorities to enjoy their own culture, to profess and practice their own religion, or to use their own language. One reason that the Human Rights Committee has been more comfortable dealing with self-determination issues under Article 27 is because it is a right that can be claimed by individuals. Among the obstacles to bringing cases under Article 1 has also been the difficulty to prove that the petitioner represents a particular people.[3]

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[3] e.g. the *Mikmaq tribal society v. Canada*, Communication No. 78/1980 (30 September 1980), U.N. Doc. Supp. No. 40 (A/39/40) at 200 (1984).

It was also noted that the Committee on Economic, Social and Cultural Rights has been in principle more open than the Human Rights Committee to the idea of claims under Article 1. It was suggested that focusing on economic, social and cultural aspects, such as the notion of subsistence, could be a way that international law could be applied constructively in relation to self-determination. The practice of the African Commission and Court on Human and Peoples' Rights, as well as the Inter-American Court of Human Rights on these issues, was also noted. Other participants noted that claiming greater group rights in the context of self-determination may have some adverse consequences, for example, that Common Article 1's right of peoples to 'freely dispose of their natural wealth and resources' may create further tensions over issues of resource scarcity.

Statehood

The role and meaning of statehood was another topic raised across various discussions. The primacy of the state in international law and the increasing impact of multilateral agreements in various aspects of daily life have further incentivized internal communities to seek international representation through independent statehood, as opposed to other options. It was considered that these communities may be better represented through arrangements that fell short of statehood, including by adopting more decentralized or federal systems. This, in turn, may require the state to consider its system of governance. One participant suggested that it may be preferable to decouple some of the 'cultural baggage' from states, and instead take on a less ambitious view of the state as the sole form of international representation.

Conflict prevention

Conflict prevention

The UN's renewed focus on conflict prevention, as part of the Secretary-General's 'surge in diplomacy for peace', was a recurrent theme of the discussions. Participants noted that issues of self-determination have been a driver of conflict in a number of ongoing situations, particularly in protracted conflicts. Self-determination conflicts based on individual and group identity often did not subside easily, even after many years. Practitioners and academics should therefore work to find ways to prevent and deescalate these conflicts at the earliest possible stage. For example, a community that experiences a denial of language, educational and cultural rights may be more likely to call for greater self-governance in order to preserve these rights. In turn, a government that is faced with claims to greater rights by a community may consider them a threat to territorial integrity and national unity. These dynamics could in turn set off a long-lasting and potentially violent conflict. The Liechtenstein Initiative on Self-determination proposes that situating these claims in the language of self-governance may help to avoid a hardening of positions on either side and prevent the resulting 'self-determination conflict'. Focusing on these drivers of conflict may also make it easier to distinguish between those self-determination movements driven by the desires of internal groups, and those caused by external interference, including annexation by another state.

Minority rights

One of the speakers noted that many post-colonial states were created in a way that, in reifying colonial boundaries, ensured domination by one group, and that in other cases the decolonization process had itself created minorities. This has created a situation in which minority rights were often cited as a trigger for secession claims, along with self-determination conflicts. Addressing minority rights was therefore key to preventing the emergence of new self-determination conflicts.

Participants recognized that, while minorities did not have the right to secede in international law, they had other, internal rights. A lack of respect for these rights had ultimately led to secession claims in many cases. Unfortunately, it was noted, the human rights project had largely failed minorities, and many minority groups across the world were continuing to fall behind, in particular due to systematic denial of the full enjoyment of human rights. There was therefore a need to demonstrate to states that they needed to narrow the gap between the treatment of minority groups and the population at large; if this was not done, there was likely to be a cost in terms of political stability and an increase in the likelihood of separatism. If states were able to narrow this gap, experience showed that successful nation-building that took minority rights into account could attenuate minority aspirations for greater self-governance or secession.

Participants encouraged those working on minority rights to empower minorities and mediate between them and the central government, rather than to push an imposed agenda or seek a particular outcome from an emerging self-determination conflict. Day-to-day, it was also important to focus on administrative measures, such as the health and education systems, with which minority groups were most likely to interact with on a daily basis, rather than seek to change the law through litigation and legislation. This included understanding to what extent administrative mechanisms within states had adequate remedies to provide access to justice for minority groups. It was also important to engage with indigenous peoples' rights, which despite often being considered an internal matter, were often based on international law. In the long-run, bottom-up structural change would be needed to ensure adequate minority rights through genuine representation.

There was also a brief discussion of the mechanisms that currently exist to uphold minority rights and prevent conflict, centered around the example of the OSCE High Commissioner on National Minorities (HCNM) and its mandate to conduct silent preventive diplomacy. One speaker noted the good practice of the HCNM and suggested that it may be replicable in other parts of the world, but that it would depend on the dynamics of a particular subregion. The need for there to be similar institutions that work on issues of minority rights in the public interest was noted as being of particular importance.

With reference to these mechanisms, participants discussed situations in which minorities in one state may have a link to a larger population elsewhere—sometimes known as 'kin-states'—and to what extent steps taken by that state to build links with that population may be considered as undermining the territorial integrity of the aforementioned state. Participants acknowledged the existing guidelines on this issue, notably in the OSCE's Bolzano/Bozen Recommendations on National Minorities in Inter-State

Relations, which prohibits unilateral steps that have the intention or effect of undermining territorial integrity.

Conflict resolution

Participants also discussed the need for best practice that could resolve ongoing self-determination conflicts. Speakers focused on the efficacy of self-governance as a tool for doing so, in line with the Liechtenstein Initiative on Self-determination.

Self-governance

Several speakers noted the variety of ways in which self-governance has been interpreted in practice—from a limited devolution of powers to the effective creation of a 'state within a state'. Overall, speakers suggested that a form of communal self-governance was the most likely option for successful conflict resolution.

Speakers cited significant positives to self-governance: it is easy to reconcile with territorial integrity, lends itself to constructive ambiguity, can avoid the difficulties of reforms imposed by the central government, and in many cases can meet the needs of communities for recognition. However, it was not without difficulties. Affected groups frequently cited non-implementation, but even when agreements were implemented, self-governance risked privileging particular subgroups within the targeted group, or undermining human rights by strengthening *de facto* leaders in the conflict and prioritizing hard security. Those groups that already had greater *de facto* independence from the central state were more likely to reject greater self-governance as a compromise, but this created the further issue that an acceptable agreement might provide too much autonomy to maintain the viability of the state.

Addressing these difficulties would require creatively designed expert solutions. Participants discussed different arrangements that integrated self-governing ethno-territorial institutions into a larger constitutional order, or that created institutions that provided self-governance for communities on particular issues. Numerous participants noted that any asymmetrical jurisdiction created, where a constituent entity within a state has more autonomy than other entities, should be designed to meet the specific needs of the group involved. One speaker suggested that in cases of territorial self-government, integrative mechanisms would be needed, in order to ensure shared rule across all institutions of government, in particular as part of the administrative state. Speakers emphasized the need for moderate leaders to provide a foundation for successful integrative mechanisms.

It was also important to consider how conflict resolution efforts could contribute to prevention. Participants discussed some of the long-term dilemmas in designing forms of self-governance to prevent future conflict. It was noted that autonomous institutions set up to provide governance in the self-governing region could foster identities in support of the existing state, or entrench separate identities that could mobilize communities in support of secession. Checks and balances between self-governing communities and the central government could help create a sustainable relationship between the two,

or create deadlock between them that dissuaded pragmatists in both populations to abandon the project of national unity.

Selected issues in addressing self-determination conflicts

Identity

Participants noted that self-determination conflicts were often characterized and exacerbated by a hardening of identities, both on the part of the central state and the community seeking a greater degree of self-determination. Efforts to address and deescalate these conflicts needed to recognize these identities, and then transcend them: to find ways for communities to represent themselves that did not sow the seeds for future identity-based conflict, or that excluded minority identities (including minorities-in-minorities). Some peace agreements to self-determination conflicts had achieved this aim more effectively than others, due to the prioritization of immediate security concerns and in some cases the achievement of *de facto* independence by groups seeking greater self-determination. In more successful cases, agreements had given flexibility to individuals in defining their identity.

Other participants recommended adopting a broader conception of identity and nationality that was not tied to statehood. In this view, severing the link between identity, nationality, and statehood could help to address the identity dimension of self-determination conflicts.

Terminology

Participants identified a need to ensure that specific terms used in cases of self-determination and self-governance are understood the same way by all parties to an agreement. This would be particularly significant if the community seeking greater self-determination speaks a different primary language those elsewhere in the state. Participants discussed the need to provide more accurate and complete references or translations for future self-determination conflicts, in particular on possible options presented to the parties of a conflict in a peace agreement.

With regard to such options the issue arose that outlining secession as a potential option for an agreement could frame it as an inevitability, even if secession was not a publicly stated ambition of the parties to the conflict. This can be the case even if other provisions, such as a transition period leading to a referendum, were contained in the agreement with the aim of decreasing the likelihood of eventual secession.

Ambiguity

Although participants emphasized the need to ensure that peace agreements to self-determination conflicts were as detailed as possible, it was noted that a degree of constructive ambiguity did serve an important purpose in 'selling' some peace agreements to publics on both sides. However, this same ambiguity tended to make the successful implementation of these agreements more difficult. In particular, there was often not enough detail in agreements on the structure of post-agreement entities.

Implementation

Participants emphasized the need for continued cooperation and coordination between the parties, mediators, guarantors and other key groups during the implementation phase of a peace agreement. One speaker encouraged the continuation of international involvement through the implementation phase in particular. The close coordination of all of these groups could help address any ambiguities contained in the agreement itself. Participants also discussed the need to clarify the potential scope of involvement of other affected states with links to the community seeking greater self-determination, as set out in the OSCE Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations.

Human rights

Participants emphasized that any agreement that would formally give a group a greater degree of self-governance should include provisions to ensure that post-conflict authorities would uphold democracy and human rights. Group rights outlined in solutions to self-determination conflicts should not undermine individual human rights, a particularly important point when there had been violent conflict, or the engagement of armed groups had been prioritized during the peace process. It was also noted, consequently, that human rights provisions in peace agreements often originated from mediators. To address this, participants identified the need to ensure buy-in from the parties themselves on human rights issues as well as to create as broad and representative a peace process as possible.

Borders

Participants emphasized the need for caution when addressing issues of borders, including border changes. New or changed borders, either imposed or agreed, had precipitated large population flows and had the potential to fuel identity-defined conflict, particularly when they changed the ethnic makeup of an area. On the other hand, in some places a removal of borders had helped to overcome contentious disputes between states, by allowing access to territory from both states while maintaining the previously held *de jure* sovereignty.

Intergovernmental involvement

Participants shared both positive and negative examples of intergovernmental involvement in the resolution of self-determination conflicts. One participant noted that intergovernmental organizations could provide useful context for peace agreements, citing the reference to the UK and Ireland in the Good Friday Agreement as 'partners in the European Union'. At the same time, participants also raised issues with the practice of intergovernmental actors in mediating peace agreements, including a focus on achievement of a 'final status', rather than continued engagement through the implementation phase.

Participants noted that intergovernmental actors could help to overcome obstacles in resolving self-determination conflicts, including in direct roles created in a peace agreement, such as a guarantor or high representative. Others suggested that international organizations could play a role in preventing self-determination conflicts by engaging independent or autonomous entities on relevant issues, while making it clear that this engagement would not confer any particular political status on them, such as statehood.

It was noted that the UN had been traditionally hesitant to address self-determination conflicts, but that its sustaining peace resolutions recognized that peacebuilding was an inherently political process, and committed it to addressing root causes of conflict.

Engagement with states and affected communities

States

Many participants agreed that engaging states would be a key next step to the success of the Liechtenstein Initiative on Self-determination. Participants noted that states could be concerned about the effect of reevaluating self-determination conceptually, particularly where this could be seen as incentivizing powerful states to interfere in their affairs or violate their territorial integrity. Another concern expressed was that, once an internal community enjoyed a degree of self-governance, this would create a slippery slope potentially leading to the creation of a 'proto-state', or that other groups would also start to make demands. The initiative would need to work with states to clarify the key distinction between the self-governance of internal communities and interference by external states.

Affected communities

There were a range of different approaches raised regarding how to address communities seeking a greater measure of self-determination. One participant noted that practitioners should encourage groups to take up options short of secession where possible. Of course, there were often a range of opinions within a particular community about the desired end goal. Some groups may also not be aware of the full range of options present in self-determination processes, and participants encouraged those involved in preventing and resolving self-determination conflicts to cooperate closely with experts on this. One participant suggested that the UN and the Office of the United Nations High Commissioner for Human Rights in particular could do more to affirm the universality of federalism and related concepts, in order to demonstrate that these were feasible possibilities for affected groups in resolving a self-determination conflict.

Others reminded participants of the concerns of those communities when entering into processes to address their desire for greater self-determination. Affected groups were often undermined by claims that they were terrorists, or by a continued denial of human rights, including minority rights. Groups often feared that the central government would use force to reintegrate them and undermine their position, making it more difficult for them to commit to a peace agreement. In the long-run, groups feared domination, particularly when implementation measures were not supported through accountability measures enforced by outside parties. Even when agreements had been completed, participants noted the number of situations in which the central government failed to implement its provisions.

Follow-up and possible next steps

- Exploring **aspects of self-determination in conflict** in more specific meetings. Topics raised included **secession, institutional design of conflict resolution processes, gender in self-determination, climate change and self-determination, post-ethnic forms of self-determination within states, and the relationship between self-determination and human rights**, amongst others.

- Further emphasis on the **role of human rights obligations and bodies in supporting peace agreements** in self-determination conflicts.

- Focusing on **the environment** as an area for work on self-determination. In particular, the implementation of conservation schemes according to environmental practices may be relevant. The emphasis on natural resources in indigenous rights makes this particularly important. In addition, climate change poses another challenge for states and communities within them.

- **Further collaboration** between academics, policymakers, mediators and diplomats on self-determination issues both in the diplomatic and academic contexts.

- Continued work on producing a **handbook of best practices for mediators working on self-determination conflicts**, including guidelines for conflict prevention and resolution. Liechtenstein would continue to reach out to mediators in order to seek their views on draft recommendations included in the handbook.

- **Engaging states and affected communities** on the ideas raised by the initiative, in order to chart a way forward for a common understanding of self-determination conflicts, on the basis of the aforementioned handbook. While there had already been some outreach to states on these ideas, there had been less engagement so far with affected communities.

- **Exploring synergies between self-determination and the Sustainable Development Goals (SDGs)**, as the key multilateral policy framework. This would include considering the place of self-determination in implementing the SDGs and fulfilling the 2030 Agenda, with a particular focus on SDG 16, on peace, justice and strong institutions, for example, through the creation of specific institutions that ensure responsive, inclusive, participatory and representative decision-making for self-governing communities.