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On the Right to External Self-Determination: “Selfistans,” Secess ion and the Great Powers’ Rule
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I. Introduction

The notion of self-determination is not novel in modern international law. It stems back to the beginning of the 20th century, when world leaders in the wake of World War I realized that national peoples, groups with a shared ethnicity, language, culture, and religion, should be allowed to decide their fate – thus, to self-determine their affiliation and status on the world scene.1 The same idea applied later in the same century to colonial peoples, and by the 1960’s, it became widely accepted that oppressed colonized groups ought to have similar rights to auto-regulate and to choose their political and possibly sovereign status.2 However, as decades passed by and as separatist minority groups throughout the world, operating outside of the decolonization paradigm, began challenging the concept of state territorial integrity, it became clear that the notion of self-determination had to be somehow confined.3 Thus, courts and scholars came up with two different forms of self-determination: internal versus external.4 The former

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2 See Joshua Castellino, Territorial Integrity and the “Right” to Self-Determination: An Examination of the Conceptual Tools, 33 BROOKLYN J. INT’L L. 503, 557 (2008) [hereinafter “Castellino”] (describing the “wave of decolonization” in the second part of the 20th century, which involved several self-determination options for the decolonized people).

3 Scholars have already noted that the self-determination rhetoric has been of limited utility to most non-colonial oppressed peoples and that it has not helped such groups in their territorial claims and quests. Id. at 556-559 (noting that the concept of self-determination has had “limited utility in determining the fate of the territory historically inhabited by people of a nation or ethnie,” because the right to self-determination “offers little remedy to the dispossession of land”). This implies that the right to self-determination seems at odds with the territorial integrity of any state or region.

4 See, e.g., Michael P. Scharf, Earned Sovereignty: Judicial Underpinnings, 31 DENV. J. INT’L L. & POL’Y 373, 379 (2003) [hereinafter “Scharf”] (noting the different forms of self-determination available to a people, which include autonomy, self-government, free association, and ultimately, secession); The Aaland
potentially applies to all peoples, and signifies that all peoples should have a set of respected rights within their central state. Thus, minority groups should have cultural, social, political, linguistic and religious rights and those rights should be respected by the mother state. As long as those rights are respected by the mother state, the “people” is not oppressed and does not need to challenge the territorial integrity of its mother state. The latter applies to oppressed peoples, the ones whose basic rights are not being respected by the mother state and the ones who are often subject to heinous human rights abuses. Such oppressed peoples, in theory, have a right to external self-determination, and external self-determination signifies that such peoples have a right to remedial secession and independence.

In theory, the distinction between internal v. external self-determination is easy to draw, and a scholar or a judge should have no difficulty deciding which minority groups should accrue the more drastic right to external self-determination. After all, we could simply look to the human rights record of the mother state, and if the record showed violations, we could determine that the minority group should be allowed to separate. In reality, the distinction is very difficult to draw. Numerous minority groups around the globe have been mistreated and have asserted their rights to external self-determination, only to find themselves rebuffed by the world community. On the other hand, some minority groups have found strong support in the eyes of the external actors, and have garnered sufficient international recognition to be allowed to separate. Why? What is so unique about some minority groups and about their independence quests that would justify the authorization to remedially secede? When exactly – under what circumstances – does the right to external self-determination accrue?

In order to answer this complex question, this Article will discuss, in Part II, the notion of self-determination, its history and its recent applications. In Part III, this Article will describe how the theory of self-determination is linked to other international law concepts, such as statehood, recognition, sovereignty and intervention. In Part IV, this Article will focus on several case studies, to illustrate the discrepancy of results

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6 Id; see also Aaland Islands Report, supra note 4.
7 Id; see also Aaland Islands Report, supra note 4 (concluding that the Aalanders would have the right to separate from Finland only if Finland disrespected their cultural rights).
8 Scharf, supra note 4, at 381 (noting that modern-day international law has embraced the right of non-colonial people to secede from their mother-state “when the group is collectively denied civil and political rights and subject to egregious abuses.”). 
9 Castellino, supra note 2, at 557-59 (noting the limited value of self-determination rhetoric to some minority groups).
10 Successful examples of self-determination where minority groups were able to exercise their right to remedial secession include Kosovo in the most recent past, East Timor, Eritrea, Bangladesh, and the Baltic Republics. Milena Sterio, The Kosovar Declaration of Independence: Problems and Dilemmas Under International Law, GEORGIA J. INT’L & COMP. L. (forthcoming 2009); Jeffrey L. Dunoff, Steven R. Ratner, David Wippman, INTERNATIONAL LAW: NORMS, ACTORS, PROCESS (2nd ed. 2006) at 112 [hereinafter “Dunoff et al.”].
attached to the self-determination struggles by different peoples. Thus, this Article will describe the self-determination quests of East Timor, Kosovo, Chechnya, South Ossetia and Abkhazia, and will show that while the first two entities achieved external self-determination, the latter three did not. Finally, in Part V, this article will argue that each self-determination seeking entity needs to meet four different criteria in order to have its quest validated by the international community. These four criteria include a showing by the relevant people that it has been oppressed, that its central government is relatively weak, that it has been administered by some international organization or group, and that it has garnered the support of the most powerful states on our planet. This Article will conclude by positing that the fourth criterion is the most crucial one: that any self-determination seeking group must obtain the support of the most powerful states, which I (and other scholars) refer to as the “Great Powers,” and that it is the Great Powers’ support or lack thereof that determines the fate of numerous peoples on our planet struggling to gain independence. This Article will posit that the right to external self-determination accrues for different peoples if and when the Great Powers decide to recognize those peoples’ causes. Ultimately, this Article will argue that such a result is unfortunate, as it inappropriately mixes the legal with the political realms, and that any rule by the Great Powers inherently challenges the notion of state sovereignty and equality.

II. Notion of Self-Determination

The principle of self-determination has a long history and has been used and discussed throughout the 20th century. It has evolved to a norm of customary law, and its contours represent a wide-ranging spectrum of alternatives for the minority group seeking to self-determine its fate. Thus, self-determination rights for a minority group may involve simply political and representative rights within a central state, on the one hand, or may amount to remedial secession and ultimately independence on the other hand.

A. History of Self-Determination

Self-determination in international law is the legal right for a “people” to attain a certain degree of autonomy from its sovereign. As early as 1918-19, leaders like Vladimir Lenin and Woodrow Wilson advanced the philosophy of self-determination, the

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11 See infra Part II.A.
12 Id.
13 Although the term “people” is ambiguous and vague under international law, it typically refers to “people who live within the same state… or people organized into a state.” Zejnullah Gruda, Some Key Principles for a Lasting Solution of the Status of Kosovo: Uti Posse detis, The Ethnic Principle, and Self-Determination, 80 CHI.-KENT L. REV. 353, 367 (2005). Thus, “people” is a legal rather than natural category. Id. Moreover, the term “people” has been purposely left undefined in international law, because if the right to self-determination were to be applied broadly to all conceivable groups, this could destabilize states and cause peace and security problems. Bartram S. Brown, Human Rights, Sovereignty, and the Final Status of Kosovo, 80 CHI.-KENT L. REV. 235, 249 (2005).
14 The principle of self-determination was first elevated to the international plane by President Woodrow Wilson, who included it in his infamous Fourteen Points. Scharf, supra note 4, at 378. For a full discussion of the principle of self-determination, see Gruda, supra note 13, at 369-82.
former based on violent secession to liberate people from bourgeois governments, and the latter based on the free will of people through democratic processes.\footnote{Kelly, \textit{supra} note 1, at 387-88.} Today, the principle of self-determination is embodied in multiple international treaties and conventions,\footnote{The term “self-determination” stems from Article 1 of the United Nations Charter, which speaks of the “principle of equal rights and self-determination of peoples.” UN Charter, article 1. Subsequent declarations voted by the UN General Assembly also refer to the term “self-determination.” See, e.g., Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514 (1960) (“[a]ll peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”); 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 (1970) “[t]he establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitutes modes of implementing the right of self-determination by that people.”.} and has crystallized into a rule of customary international law, binding on all states.\footnote{Scharf, \textit{supra} note 4, at 378; 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, 31-32 (June 21); Western Sahara, 197 I.C.J. 12, 31-33 (Oct. 16); Concerning the Frontier Dispute (Burk. Faso v. Rep. of Mali), 1986 I.C.J. 554, 566-67 (Dec. 22); Concerning East Timor (Port. v. Austl.), 1995 I.C.J. 90, 265-68 (Jun 30).}

Under the principle of self-determination, a group with a common identity and link to a defined territory is allowed to decide its political future in a democratic fashion.\footnote{Scharf, \textit{supra} note 4, at 379.} For a group to be entitled to exercise its collective right to self-determination, it must qualify as a “people.”\footnote{\textit{Id.}} Traditionally, a two-part test has been applied to determine when a group qualifies as a people.\footnote{\textit{Id.} Note however that the term “people” has been purposely left undefined under international law and that the tests seeking to determine when a group qualifies as a people have been flexibly applied. \textit{See supra} note 13.} The first prong of the test is objective and seeks to evaluate the group to determine to what extent its members “share a common racial background, ethnicity, language, religion, history, and cultural heritage,” as well as “territorial integrity of the area the group is claiming.”\footnote{\textit{Id.}} The second prong of the test is subjective and examines “the extent to which individuals within the group self-consciously perceive themselves collectively as a distinct ‘people,’ and “the degree to which the group can form a viable political entity.”\footnote{\textit{Id.}}

Once the determination has been made that a specific group qualifies as a people and thus has the right to self-determination, the relevant inquiry becomes whether the right to self-determination creates a right to secession and independence?\footnote{Secession under international law refers to separation of a portion of an existing state, whereby the separating entity either seeks to become a new state or to join yet another state, and whereby the original state remains in existence without the breaking off territory. Successful secessions around the globe have
words, as mentioned above, the right to self-determination can take different forms that are less intrusive on state sovereignty than secession is. For example, self-determination of groups that qualify as a people can be effectuated in different ways: through self-government, autonomy, free association, or, in extreme cases, independence. Understandably, the international community views secession with suspicion, and traditionally, the right to independence or secession as a mode of self-determination has only applied to people under colonial domination or some kind of oppression. However, the modern-day international law has come to embrace the right of non-colonial people to secede from an existing state, “when the group is collectively denied civil and political rights and subject to egregious abuses.” This right has become known as the “remedial” right to secession, and has its origin in the infamous 1920 Aaland Islands Case.

The Aaland Islands were a small island nation situated between Finland and Sweden, belonging to the former and seeking to reunite with the latter. In fact, the Aalanders claimed that they were ethnically Swedish, and that they wished to break off from Finland and to become a part of Sweden. In an advisory opinion, the second Commission of Rapporteurs operating within the auspices of the League of Nations, held first, that this issue was properly of international, not domestic jurisdiction, and second, that the Aalanders had a right to a cultural autonomy, which had to be exercised within Finland. Only if Finland disregarded their ethnic and cultural autonomy would the Aalanders’ right to separate from Finland be triggered.

been rare, because secession seems inherently at odds with the principles of state sovereignty and territorial integrity, which have been core values of international law for centuries. Dunoff et al., supra note 10, at 112.

24 Scharf, supra note 4, at 379.
25 Scharf, supra note 4, at 380 (noting that secession is “synonymous with the dismemberment of sates”). Note the 1970 statement by then UN Secretary-General U. Thant: “As far as the question of secession of a particular section of a 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 it will ever accept the principle of secession of a part of its Member States.” Secretary-General’s Press Conferences, in 7 UN Monthly Chronicle 36 (Feb. 1970).
26 Scharf, supra note 4, at 380. Note that under this view, the independence of a colony was not considered a secession, because that term referred only to the separation from a state of a portion of its domestic territory. Id. Moreover, the international community has also leaned on the theory of “salt-water colonialism,” under which self-determination only applied to lands separated from the metropolitan mother-state by oceans or seas. Id.
27 Scharf, supra note 4, at 381.
28 Id.
29 Dunoff et al., supra note 10, at 118-119.
30 Id. at 119.
31 The League of Nations created an International Committee of Jurists to determine whether the League of Nations had jurisdiction over this issue, and the Committee’s report generally held that the League of Nations had such jurisdiction over this issue. Report of the International Committee of Jurists Entrusted by the Council of the League of Nations with the Task of Giving an Advisory Opinion upon the Legal Aspects of the Aaland Islands Question, League of Nations Official Journal, Special Supp. No. 3, at 5-10 (1920). Then, the League of Nations appointed a Commission of Rapporteurs to recommend a solution to the
Similarly, the 1970 Declaration on Principles of International Law Concerning Friendly Relations preconditions the right of non-colonial people to separate from an existing state on the denial of the right to a democratic self-government by the mother-state. A similar clause, striking a balance between the right to self-determination and territorial integrity, was inserted in the 1993 Vienna Declaration of the World Conference on Human Rights, accepted by all UN member states. Other UN bodies have also referred to the right to remedial secession, such as the 1993 Report of the Rapporteur to the UN Sub-Commission Against the Discrimination and the Protection of Minorities on Possible Ways and Means of Facilitating the Peaceful and Constructive Solution of Problems Involving Minorities, and the General Recommendation XXI adopted in 1996 by the Committee on the Elimination of Racial Discrimination.

B. Recent Applications of Self-Determination Principles

Most recently, the Canadian Supreme Court dealt with the right to self-determination regarding the proposed separation of Quebec from Canada. Embracing the Aaland Islands precedent, the Canadian Supreme Court distinguished the right to internal self-determination from the right to external self-determination. While the former refers to a level of provincial autonomy within the existing state (Canada in this instance), including political, civic, cultural, religious and social rights, the latter refers to the right to separate from the existing state in order to form a new, independent state.

Aaland Islands problem, and the Rapporteurs report held that “[t]he separation of a minority from the State of which it forms a part and its incorporation in another State can only be considered as an altogether exceptional solution, a last resort when the State lacks either the will or the power to enact and apply just and effective guarantees.” Aaland Islands Report, supra note 6.

“Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity of political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or color.” G.A. Res. 2625, UN GAOR, 25th Sess., Supp. No. 28, at 121, UN Doc. A/8028 (1970).

Vienna Declaration and Programme of Action, World Conference on Human Rights, para. 2, UN doc. A/CONF.157/23 (1993), reprinted in 32 ILM 1661 (1993). Note that the Vienna Declaration, unlike the 1970 Declaration on Friendly Relations, “did not confine the list of impermissible distinctions to those based on ‘race, creed or color,’ indicating that distinctions based on religion, ethnicity, language or other factors would also trigger the right to secede.” Scharf, supra note 4, at 382.


Id.

Id. (defining internal self-determination as “a people’s pursuit of its political, economic, social and cultural development within the framework of an existing state,” and defining external self-determination
The Canadian Supreme Court, like the League of Nations, held that a people has a right to internal self-determination first, and that only if that right is not respected by the mother-state, the same people’s right to break off may accrue. In other words, the right to separate is conditioned on the non-respect of the right to some form of provincial autonomy.

Recent developments in international law may also lend credence to the idea that the right to remedial secession has crystallized as a norm. As an example, in the case of the former Yugoslavia, the republics of Slovenia, Croatia, Bosnia and Herzegovina, and Macedonia were entitled to secede because they had been denied the proper exercise of their right to democratic self-government, and, in some cases, had been subject to ethnic violence by the central government in Belgrade.

These authorities suggest that if a government is at the high end of the scale of representative government, the only modes of self-determination that will be given international backing are those with minimal destabilizing effect and achieved by consent of all parties. If a government is extremely unrepresentative and abusive, then much more potentially destabilizing modes of self-government, including independence, may be recognized as legitimate. In the latter case, the secessionist group would be fully entitled to seek and receive external aid, and third-party states and organizations would have no duty to refrain from providing support.

In addition to the above conclusion that successful minority groups that have exercised the remedial secession option have been victim of oppressive central government policies, I argue that all such groups have also been supported by some of the most powerful states. As the discussion below on statehood and recognition will demonstrate, and as I will argue in Part V, it is the support of the powerful super-states (the Great Powers) that seems to enable minority groups to secede from their mother state. Slovenia, Croatia, Bosnia and Herzegovina and Macedonia were all supported by powerful European Union (“EU”) countries and the United States; their plight to external self-determination resulting in remedial secession was logistically, financially, as potentially taking the form of secession, and as arising “in only the most extreme of cases... under carefully defined circumstances.”); see also Gruda, supra note 13, at 380-81 (detailing the content of the right to external self-determination and of the right to internal self-determination).

40 Reference re Secession of Quebec, [1998] 2 S.C.R. 217 (“when a people is blocked from the meaningful exercise of its right to self-determination internally, it is entitled, as a last resort, to exercise it by secession...”). Note that the Canadian Supreme Court declined to answer the issue of under what circumstances such a right to secession accrues, as it determined that the population of Quebec is entitled to meaningful internal self-determination and thus not in a position to claim the right to external self-determination. Dunoff et al., supra note 10, at 222.

41 Reference re Secession of Quebec, [1998] 2 S.C.R. 217 at [page number] (noting that when “the ability of a people to exercise its right to self-determination internally is somehow being totally frustrated,” only then does the right to external self-determination accrue).

42 Id.

43 Scharf, supra note 4, at 384.
economically and politically supported by these super-states. Thus, although the right to remedial secession for oppressed peoples may be evolving into a norm of customary law academically speaking, in practice, this right accrues only if there is sufficient political support for the people at stake.

III. Self-Determination and Other Theories

If the break-away entity is supported by the most powerful states and if it exercises the right to external self-determination and declares its independence, it faces the legal challenge of proving that it qualifies as a state under international law. Moreover, it faces the political challenge of obtaining official recognition from the most relevant legal actors. In fact, an entity that has not met these burdens risks being shunned by the relevant international actors. Consequently, such an entity cannot engage in any meaningful form of international relations and will remain isolated, thereby undermining its chances of achieving viability. Thus, self-determination rights are closely connected to other legal theories, such as statehood and recognition. In addition, in order to exercise its right to external self-determination, the break-away entity may need external support by other powerful states in the form of intervention, against the territorial sovereignty of its mother state, which may seek to prevent the break-away entity from separating. Thus, the notion of self-determination is closely connected to two other concepts: sovereignty and intervention.

A. Self-Determination, Statehood and Recognition

Once an entity breaks off from its mother state and seeks to become recognized as a new state, the legal question that arises is whether that entity satisfies the relevant international legal criteria of statehood. According to the 1933 Montevideo Convention, an entity can achieve statehood if it fulfills four criteria: if it has a defined territory, a permanent population, a government, and the capacity to enter into international relations.\(^44\) Moreover, scholars have elaborated additional criteria for statehood, including independence, sovereignty, permanence, willingness and ability to observe international law, a certain degree of civilization, and, in some cases, recognition.\(^45\) Statehood is a legal theory that seeks to justify the attribution of statehood on objective criteria, which are at least in theory independent from the political reality underlying many attempts at secession or separation.\(^46\)

\(^44\) Montevideo Convention on the Rights and Duties of States, 165 LNTS 19 (1933) [hereinafter “Montevideo Convention”].


\(^46\) In fact, article 3 of the Montevideo Convention states that “[t]he political existence of the state is independent of recognition by the other states.” Montevideo Convention, supra note 44, article 3.
In practice, the theory of statehood has led to anomalous results. For example, the first criterion of the Montevideo Convention requires that an entity have a defined territory. Many entities that we routinely consider states have a disputed and often undefined territory. For example, Israel’s territory is disputed by its Arab neighbors; the two Koreas have battled over their border for decades; Somalia’s and Sudan’s territories are disputed by potent rebel movements. As to the second criterion, many entities that we view as states have un-permanent, migratory populations. The Democratic Republic of Congo, Sudan, and Iraq, to name a few, have all experienced significant refugee crisis, resulting in shifts in their respective populations, without thereby losing their statehood on the international scene. Other states have very small populations, like the Pacific Island state of Nauru (10,000), or the city-state of San Marino (24,000), and yet such entities are still treated as states. Regarding the third criterion, entities with collapsed governments have also remained “states” in the past. For example, Afghanistan throughout the 1990’s did not have a stable government, and yet it remained treated as a state and retained its seat in all major international organizations. Finally, as to the fourth criterion, many entities routinely considered states do not have the capacity to enter into international relations. Small nations like Liechtenstein and Monaco depend on Switzerland and France respectively for their national defense. Several Pacific island nations, likewise, depend on the United States and New Zealand for their defense and have been dubbed “freely associated states.” Other small nations depend on the United States, and/or other economically powerful nations, for trade and commercial relations.

The above examples demonstrate that the legal theory of statehood remains inconsistently applied in practice, and that often the geo-political reality of a given region dictates whether an entity is treated as a state by the international community. Thus, statehood in practice seems to hinge on recognition: in other words, an entity seems to be treated as a state only if the outside world, and specifically, the most powerful states (the

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47 Dunoff et al., supra note 10, at 115 (noting the flexible interpretation of the statehood criteria by “global elites.”).
48 Id. at 115-116.
49 Id. at 116.
51 Dunoff et al, supra note 10, at 115.
52 Id. at 116.
53 Id.
54 Id.
55 Id. (describing the special arrangements that Micronesia, Palau, the Cook Islands, and Niue – the co-called freely associated states – have with the United States and with New Zealand).
56 The so-called “dependency theory” describes this problem as the “notion that resources flow from a "periphery" of poor and underdeveloped states to a "core" of wealthy states, enriching the latter at the expense of the former.” See https://en.wikipedia.org/wiki/Dependency_theory (last visited on Aug. 27, 2008).

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Great Powers), wishes to recognize it as such. As I argue below in Part V, an entity will be recognized as a new state only if it garners the support of the most powerful states in the international legal arena.

There are two theories of recognition under international law: the declaratory view and the constitutive view. Under the former, recognition is seen as a purely political act having no bearing on the legal elements of statehood. Under this view, outside states can choose to recognize the new state, or not, but that decision does not influence the legal determination of statehood. Under the latter, recognition is seen as one of the main elements of statehood. Thus, an entity cannot achieve statehood unless it is recognized by outside actors as a state.

While most academics would support the declaratory view, the constitutive view has teeth in practice nonetheless. In fact, one of the four criteria of statehood – the capacity of the entity seeking to prove statehood to enter into international relations – seems closely linked to recognition, because an entity claiming to be a state cannot conduct international relations with other states, unless those other states are willing to enter into such relations with that entity. In other words, the conduct of international relations is a two-way street, involving the new “state” as well as outside actors that have to be willing to accept the new “state” as their sovereign partner. No state can exist in a vacuum – a fact well established by international practice. When Southern Rhodesia (now Zimbabwe) decided to separate from Great Britain and to form an independent state

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57 A cynic might ask why international law cares about statehood at all. In other words, why would a newly independent state care for proving to anyone on the outside that it meets the requirements of statehood? If the people who live in a given country are happy with the achievement of independence, they should not have to worry about proving to the outside world that their home nation qualifies as a state under international law. However, the reality proves the opposite: a new “state” faces crucial challenges after its assertion of independence, such as economical and trade issues, developmental problems, security concerns, monetary hurdles, etc. Thus, an entity seeking to become a state on the international scene must first persuade external actors that it is a state in order to become fully engaged in international relations with such external actors, on which it often depends. The external actors on which virtually all new states depend are the most powerful states in the world, or, as described in this Article, the Great Powers. Thus, it is the Great Powers’ determination that an entity shall (or shall not) be recognized as a new state that often pre-determines the outcome of a separation struggle. See infra Part V.

58 Dunoff et al, supra note 10, at 137.
59 Id.
60 Id. (“[a]n entity that meets the criteria of statehood immediately enjoys all the rights and duties of a state regardless of the views of other states.”).
61 Id. at 138.
62 Id. (“the refusal by states to afford recognition would mean that the entity claiming statehood would not be entitled to the rights of a state.”).
63 Id.
64 Id. (arguing that “if states refuse to acknowledge that an entity meets these criteria… they might continue to treat the claimant as something less than a state;” thus, an unrecognized state may find that its passports are unacceptable to the immigration authorities of other states.).
65 Thus, an important treatise states that “[r]ecognition, while declaratory of an existing fact, is constitutive in nature, at least so far as concerns relations with the recognizing state.” 1 OPPENHEIM’S INTERNATIONAL LAW 133 (Robert Jennings & Arthur Watts ed., 9th ed. 1992).
in 1965, most of the world refused to recognize Southern Rhodesia as a state.\(^\text{66}\) Consequently, Southern Rhodesia remained isolated from the world and was unable to conduct international relations.\(^\text{67}\) The non-recognition of Southern Rhodesia by outside actors prevented it from fully exercising the attributes of legal statehood.\(^\text{68}\) Thus, recognition, whether it is considered as a political or legal act, has a direct impact on the pragmatic determination of statehood: whether an entity will be able to truly act as a state on the international scene. “While international recognition is no longer widely considered to be a required element of statehood, in practice the ability to exercise the benefits bestowed on sovereign states contained in the Westphalian sovereignty package requires respect of those doctrines and application of them to the state in question by other states in the interstate system.”\(^\text{69}\)

In addition to the declaratory and constitutive views, scholars have advanced a third, intermediary view on recognition. The intermediary view seeks to combine the declaratory and constitutive view while acknowledging what truly goes on in practice. It asserts that recognition is a political act independent of statehood, but that outside states have a duty to recognize a new state if that state objectively satisfies the four criteria of statehood.\(^\text{70}\) “Recognition, while in principle declaratory, may thus be of great importance in particular cases. In any event, at least where the recognizing government is addressing itself to legal rather than purely political considerations, it is important evidence of legal status.”\(^\text{71}\)

Finally, another wrinkle to the international theory of recognition was added in the early 1990’s, following the break-up of the former Soviet Union and the former Yugoslavia. At that time, the EU foreign ministers developed guidelines on the recognition of new states in Europe.\(^\text{72}\) The EU foreign ministers, concerned with the existence and mal-treatment of minorities within the former Soviet Union and the former Yugoslavia, announced that one of the criteria of recognition of new states within the EU would be the respect of human rights, as well as the protection of minority rights.\(^\text{73}\) Thus,

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\(^{66}\) Dunoff et al., supra note 10, at 138. Note that the UN Security Council condemned the Southern Rhodesia declaration of independence and declared that it had no legal validity. S.C. Res. 217, Nov. 20, 1965.

\(^{67}\) Dunoff et al, supra note 10, at 138 (noting that nearly all states refused to conclude treaties with Southern Rhodesia).

\(^{68}\) Note that the situation was resolved in 1978, following a peace accord which led to a majority government in Zimbabwe. Id.

\(^{69}\) Kelly, supra note 1, at 382.

\(^{70}\) Id.

\(^{71}\) Crawford, supra note 45, at 133.

\(^{72}\) Id.

\(^{73}\) Declaration on the “Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union,” 31 I.L.M. 1486 (1992) (requiring “respect for the provisions of the Charter of the United Nations … especially with regard to the rule of law, democracy and human rights,” and “guarantees for the rights of ethnic and national groups and minorities” in order for a new state to be recognized).
an entity applying for statehood within the EU had to prove that it treated minority
groups fairly and that it respected minority rights in its territory.\textsuperscript{74}

While these criteria have not reached the status of international custom and do not
bind states which are not members of the EU, they show nonetheless an evolution of
international law in the field of recognition.\textsuperscript{75} In fact, it seems that international law
today allows outside actors to impose additional requirements on entities striving for
recognition.\textsuperscript{76} Regional bodies, organizations, and states can thus choose to require that
the entity seeking recognition comply with specific criteria that have nothing to do with
the legal contours of statehood. This phenomenon illustrates once more the fact that
powerful states or groups of states, like the EU, often dictate the fate of independence-
seeking movements by choosing to legitimize their plight (or not) under specific
conditions.

In the context of the EU, such imposition of additional criteria of recognition was
used several times by the Badinter Commission, an arbitral body of experts established to
deal with the various issues arising out of the Yugoslav crisis in the 1990’s.\textsuperscript{77} With
respect to Macedonia, the Badinter Commission recommended that Macedonia not be
recognized as a new state unless it agreed to insert a clause in its constitution promising
not to claim additional territory against neighboring states.\textsuperscript{78} After Macedonia agreed to
follow the Badinter Commission recommendations, the EU foreign ministers decided to
impose yet an additional requirement on Macedonia by indicating that this new state
would be recognized only if it used a name which did not include the term Macedonia.\textsuperscript{79}
This “requirement” resulted from a geo-political grievance by EU-member Greece, which
was afraid that the new state of Macedonia would have territorial claims to a part of
northern Greece that had also been known as Macedonia centuries ago.\textsuperscript{80} The use of such
additional criteria of recognition by the EU signals a regional trend of conditioning
recognition on the respect of fundamental rights and rules of international law, as well as

\textsuperscript{74} Id.
\textsuperscript{75} In fact, the Badinter Commission, an arbitral body of experts operating in the early 1990’s to resolve
legal issues arising from the Yugoslav dissolution, added a new criterion for recognition of new states,
because “it embraced democratization and respect for human rights” as such criteria. Enver Hasani, Self-
Determination Under the Terms of the 2002 Union Agreement Between Serbia and Montenegro: Tracing
the Origins of Kosovo’s Self-Determination, 80 CHI.-KENT L. REV. 305 (2005).
\textsuperscript{76} For example, the EU set out the respect of human rights as a “fundamental prerequisite for recognition.”
Brown, supra note 13, at 247.
\textsuperscript{77} Dunoff et al, supra note 10, at 114-15.
\textsuperscript{78} Conference on Yugoslavia Arbitration Commission Opinion No. 6 on the Recognition of the Socialist
Republic of Macedonia by the European Community and Its Member States, 31 I.L.M. 1507 (1992)
[hereinafter “Badinter Opinion No. 6”]. Note that the debate over Macedonian recognition was sparked by
Greek claims that Macedonia would have territorial claims against northern Greece, a region also known as
Macedonia. Dunoff et al, supra note 10, at 142.
\textsuperscript{79} Dunoff et al, supra note 10, at 143. Ultimately, this issue was resolved when Macedonia was admitted to
the UN under the name of “The Former Yugoslav Republic of Macedonia” pending settlement of the name
issue with Greece. Id. The United States government decided in 2004 to refer to the country as the
Republic of Macedonia. Id.
\textsuperscript{80} Id.
on obedience with the regional geo-political equilibrium.\textsuperscript{81} In other words, regional authorities are telling new states that they will only be accepted as full players if they vouch to respect the rule of law and to adhere to preserving regional stability and peace.

Moreover, the use of the additional criteria for recognition described above demonstrates the leverage and power that super-states have on the international scene. As I posit below in Part V, and as I argue throughout this paper, entities seeking to become recognized as new states must garner the support and help of the most powerful states. As a corollary, entities seeking to become recognized as new states must at time accept the rules set forth by the super-states, like Macedonia did when it sought to separate from the former Yugoslavia. The acceptance of these new recognition rules by the weaker states demonstrates their acquiescence in the new global order of sovereign, more sovereign and less sovereign states. Whether an entity ultimately acquires the right to self-determine its fate and whether it is ultimately recognized as a new state correlates directly to whether that entity enjoys the support of the most sovereign states.

B. Self-Determination, Sovereignty and Intervention

The principle of self-determination is also closely linked to the notions of state sovereignty and intervention.\textsuperscript{82} State sovereignty, in its Westphalian form, typically includes the following characteristics: an equality of states within the international community, a general prohibition on foreign interference with internal affairs, a territorial integrity of the nation-state, and an inviolability of international borders.\textsuperscript{83} However, as early as the mid-19\textsuperscript{th} century, scholars noticed a “sliding scale of sovereign equality” among states, by linking “the degree of sovereignty a state has to the degree of equality it enjoys on the international stage.”\textsuperscript{84} The notion of unequal state sovereignty was further enhanced through the creation of the United Nations and its Security Council structure, giving veto power to five super-states: the United States, Russia, France, Great Britain and China. Scholars and historians have dubbed such powerful states the “Great Powers,” and this evolving club of super-sovereign states currently also includes three other G-8 countries: Germany, Italy and Japan.\textsuperscript{85} The Great Powers possess higher, unequal sovereignty attributes than other states, because they have enhanced

\textsuperscript{81} The latter proposition of conditioning recognition on the respect of the regional geo-political equilibrium is well illustrated by the Greek opposition to the recognition of Macedonia if the new entity wanted to be called by that name. In fact, nothing in the international legal doctrine on recognition authorizes states to require new entities to change their name if they wish to be recognized; yet, in practice, such results are possible and have occurred at least once in Europe, as the Macedonian example demonstrates.

\textsuperscript{82} In fact, the earned sovereignty theory also supports this view of qualified state sovereignty, as it perceives sovereignty as “a bundle of authority and functions which may at times be shared by the state and sub-state entities as well as international institutions.” See James R. Hooper, Paul R. Williams, \textit{Earned Sovereignty: The Political Dimension}, 31 DENV. J. INT’L. & POL’Y 355, 357 (2003) [hereinafter “Hooper & Williams”].

\textsuperscript{83} Kelly, \textit{supra} note 1, at 376.

\textsuperscript{84} \textit{Id}.

\textsuperscript{85} Kelly, \textit{supra} note 1, at 365
decisionmaking authority in the institutional context, as well as in the economic realm.\(^8^6\) Because the Great Powers are essentially more “sovereign” than other states, they may engage in interventions and cross other states’ borders, in the name or preserving some higher ideals.

Thus, in the modern world, Great Powers can “cross theoretically unbreachable frontiers either individually or collectively,” in a variety of differently justified state interventions.\(^8^7\) One of such forms of intervention, which arises where Great Powers breach frontiers to avoid human suffering and tragedy, has been termed “humanitarian intervention.”\(^8^8\) A self-determination seeking people may be aided by the Great Powers’ decision to organize a humanitarian intervention, to prevent a central government from oppressing that people. Conversely, the Great Powers may decide not to help a struggling minority movement, by refusing to stage an intervention and by implicitly turning a blind eye to the oppressive policies by the governing regime.

Some American presidents have embraced this intervention theory, and have even attempted to stretch its contours by constructing a so-called “involuntary sovereignty waiver” justification for the application of intervention. Thus, Richard Haass, the former undersecretary of state for policy planning in the G.W. Bush administration and the current President of the Council on Foreign Relations, advanced the idea that “countries constructively waive their traditional sovereignty shield and invite international intervention when they undertake to massacre their own people, harbor terrorists, or pursue weapons of mass destruction.”\(^8^9\) According to Haass, state sovereignty does not enjoy absolute protection in the modern world and has been eroded through the forces of globalization; thus, we need to adjust our way of thinking to account for “weak states” and “outlaw regimes” which jeopardize their sovereignty “by pursuing reckless policies fraught with danger for their citizens and the international community.”\(^9^0\) Hass further reasoned that “sovereignty is not a blank check,” and considered that Great Powers have unique intervention rights with respect to rogue regimes, which forfeit their sovereign privileges and their immunity from external, armed intervention.\(^9^1\) Thus, according to Haass, there are three circumstances which justify intervention: 1) where a state commits or fails to prevent genocide or crimes against humanity on its territory; 2) where

\(^8^6\) Kelly, \textit{supra} note 1, at 365-66.
\(^8^7\) Kelly, \textit{supra} note 1, at 381.
\(^8^8\) \textit{Id.}
\(^9^0\) Georgetown Speech, \textit{supra} note 89; \textit{see also} Kelly, \textit{supra} note 1, at 403.
\(^9^1\) Kelly, \textit{supra} note 1, at 403.
countries take action to protect their nationals against other states that harbor international terrorists; and 3) where states pursue weapons of mass destruction.\textsuperscript{92}

These three exceptions to the norm against intervention are justified, according to Haass, because sovereignty is conditional, and “[w]hen states violate minimum standards by committing, permitting, or threatening intolerable acts against their own people or other nations, then some of the privileges of sovereignty are forfeited.”\textsuperscript{93} Thus, under this theory, what a state does within its own territory affects many other states, so that it can no longer be asserted that a state may internally do whatever it wishes, as such actions necessarily impact other states,\textsuperscript{94} and as such actions give rights to other states to intervene. In other words, when a state engages in a particular kind of offensive behavior, it has involuntarily “waived” its sovereignty.\textsuperscript{95} The involuntary waiver of sovereignty theory illustrates another example of the dominance exercised by the Great Powers on the international scene. Under this theory, the Great Powers have expanded right to intervene in the affairs of another, less sovereign, country, anytime that the Great Powers see the other, less sovereign, country’s behavior as troublesome. Thus, the Great Powers, and not the United Nations or any other global body, acquire global decision-making authority under the involuntary sovereignty waiver theory when it comes to intervention within any other country, anywhere in the world, at any time. The Great Powers rule and hegemony over the rest of the world becomes dangerously potent if one adopts the involuntary sovereignty waiver theory without any reservations or restrictions.

The theory of involuntary sovereignty waiver has been advanced in the recent decades to justify different types of intervention against different “rogue” regimes. For example, in 1991, a UN-sanctioned intervention on behalf of the Kurds was justified on the grounds that the Kurds in northern Iraq were suffering sever human rights deprivations by the Iraqi government.\textsuperscript{96} More recently, the NATO intervention in Kosovo in 1999 exemplifies the notion of humanitarian intervention justified on involuntary sovereignty waiver grounds. Serbia engaged in a campaign of human rights violations in Kosovo; by doing so, it waived its sovereignty over the Kosovar region and “invited” outside actors to intervene.\textsuperscript{97} Thus, outside actors were legally justified in encouraging and providing for the Kosovar independence, because Serbia’s claim to territorial sovereignty was not absolute and remained subject to external influences.\textsuperscript{98} In

\textsuperscript{92}Kelly, \textit{supra} note 1, at 404.
\textsuperscript{93}Georgetown Speech, \textit{supra} note 89.
\textsuperscript{94}Kelly, \textit{supra} note 1, at 404-405.
\textsuperscript{95}Id.
\textsuperscript{96}Scharf, \textit{supra} note 4, at 383.
\textsuperscript{97}See infra Part V, which discusses the idea of an involuntary sovereignty waiver by rogue states and regimes, whereby such rogue states and regimes involuntary waive their sovereignty and invite external interference to remedy their own wrongdoing.
other words, the Serbian sovereignty over Kosovo had diminished to such a minimum, because of the Serbian government’s oppressive policies over Kosovo, that the notion of territorial sovereignty became trumped by the necessity of humanitarian intervention or other kinds of outside interference.99

Thus, the idea of self-determination, in the modern world, seems closely linked to state sovereignty and intervention. Because states are only “conditionally” sovereign, they may not suppress legitimate self-determination movement infinitely. If states choose to oppress self-determination movements, then such movements may seek help from external actors, typically, the Great Powers, which may intervene to help the struggling movement achieve some form of self-determination. In some instances, the Great Powers may intervene, as in the case of Kosovo, to aid the struggling movement to exercise the most drastic form of external self-determination, namely, remedial secession and independence.100 The presence of the Great Powers on the international legal scene has eroded the sovereignty of other, “lesser” states; the lesser states’ sovereignty has thus become conditional. Moreover, the Great Powers have indicated their willingness to intervene in the affairs of such lesser states, to aid independence-seeking movements, when such movements are viewed as legitimate by the Great Powers.101 The notion of self-determination has therefore become intertwined with the notions of state sovereignty and intervention, and all three are intrinsically linked with the presence of the Great Powers.

IV. Case Studies

Several case studies illustrate the link between self-determination, state sovereignty and intervention described above. These studies include East Timor, Chechnya, Kosovo and Georgia. In each of these countries, an important group, a “people,” struggled for self-determination and ultimately independence. Yet, as will be described below, only the Timorese and the Kosovars were successful in their plight for self-determination, namely because the Great Powers determined that their cause was legitimate. The Chechens and the South Ossetians and Abkhazians were less lucky: their struggles for self-determination remained unsupported by the Great Powers and these regions still remain governed by the same oppressive central regimes.

A. East Timor

“Humanitarian Intervention,” 93 AM. J. INT’L L. 824 (1999); Ruth Wedgewood, NATO’s Campaign in Yugoslavia, 93 AM. J. INT’L L. 828 (1999). Other authors have supported NATO actions against the FRY with reservations, arguing that the Kosovo case should not set a precedent for the future but should be considered an exception due to regional (European) considerations. See W. Michael Reisman, Kosovo’s Antinomies, 93 AM. J. INT’L L. 860 (1999).

99 Id.
100 In the case of Kosovo, the Great Powers intervened through NATO, by engaging in a series of air strikes on the territory of Kosovo’s then mother-state, the Federal Republic of Yugoslavia. See infra Part IV.C.
101 As will be discussed below, the examples of East Timor and Kosovo illustrate the idea of minority movements aided by the world community in their quest for independence. See infra Parts IV.A and IV.C.
East Timor forcibly became a part of Indonesia in 1976, when Indonesia claimed East Timor as its 27th Province in 1976. Prior to 1976, East Timor had been colonized and administered by Portugal. The international community was swift in its condemnation of Indonesia following the 1976 take-over, and the United Nations continued to recognize Portugal as East Timor’s official administrator. The Indonesian rule over East Timor “imposed a military force that viciously led to human rights and humanity violations,” and was often marked by extreme violence and brutality. Estimates of the number of East Timorese who died during the occupation vary from 60,000 to 200,000.

In 1999, the East Timorese people voted in a United Nations-organized referendum to separate from Indonesia. Indonesia protested the referendum results and backed violent militias to attack and intimidate the East Timorese populations. The United Nations Security Council, in Resolution 1264, established a peacekeeping force, the International Force for East Timor, to safeguard East Timor. East Timor was then administered by the United Nations, with substantial support from other countries. East Timor became the first new sovereign state of the 21st century, by obtaining independence on May 20, 2002. A few months later, East Timor joined the United Nations as a new, independent state. Sporadic outbreaks of violence have plagued East Timor since its independence, but the constant military involvement by the international community in East Timor has managed to halt a wide spread of violence.

The East Timorese struggle for independence illustrates perfectly the paradigm of a self-determination seeking people unaided v. aided by the Great Powers, and how the Great Powers’ support, or lack thereof, influences the result of such a self-determination struggle. The East Timorese people fought for independence during several decades. During the Cold War era, however, their struggle was unsupported by some of the Great Powers, and the East Timorese were not able to assert independence from Indonesia on their own, as they lacked the political, economic and military capability to do so. After the end of the Cold War, the Great Powers began supporting the East Timorese, which was reflected in the Security Council decision-making process, when virtually all Security Council members agreed that the East Timorese should no longer remain

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103 Id. at 62 (noting that the Portuguese first colonized East Timor in 1533).
105 Purnawanty, supra note 102, at 69.
107 Purnawart, supra note 102, at 67.
109 Purnawart, supra note 102, at 70.
111 Id.
112 Id.
governed by Indonesia. Thus, the United Nations Security Council authorized the deployment of peacekeepers to East Timor and helped organize the popular referendum and elections, which ultimately paved the way toward Timorese independence. Absent the global, and the Great Powers’ support in the post Cold War period, it is doubtful that East Timor would have gained independence from Indonesia as easily.

B. Chechnya

Chechnya existed until the early 1990’s as part of the former Soviet Union. Following the collapse of the Soviet Union in 1991, Chechnya obtained de facto independence after the so-called First Chechen War with Russia. During this period of de facto independence, Chechnya became a “center of criminal activities of extraordinary proportions” and generally failed to build any representative institutions of a viable state. In fact, after the First Chechen War, parliamentary and presidential elections took place in January 1997, and the newly elected government in Chechnya, while seeking to maintain Chechen sovereignty, appealed to Moscow for help. Chechnya needed to rebuild itself, as its infrastructure and economy were heavily undermined by the war. Russia sent money for the rehabilitation of the Chechen state, but most of these funds were stolen by Chechen authorities and distributed between favored warlords. Chechnya also faced a refugee crisis, with “nearly half a million people (40% of Chechnya’s prewar population) [who] had been internally displaced and lived in refugee or overcrowded villages.” Fearing further violence, Russian military troops remained stationed in Chechnya.

In September 1999, Moscow accused the Chechens for their involvement in a series of apartment bombings, which took place in several Russian cities. As a retaliatory measure, Russia initiated a prolonged air campaign of military strikes against Chechnya, followed by a ground offensive in October 1999. The latter effectively started the Second Chechen War. Because the second war had been much better organized and planned than the first Chechen War, Russian military forces were quickly

113 See Sreeram Chaulia, A Wold of Selfistans?, Global Policy Forum (March 13, 2008), available at http://www.globalpolicy.org/nations/emerging/2008/0313selfistans.htm (last visited on Jan. 25, 2009) [hereinafter “Chaulia”] (“As long as General Suharto [the Indonesian leader] was necessary for the West’s Cold War agenda, the United States, Britain, and Australia helped Indonesia to annex and control East Timor. Once Indonesia lost the support of the great powers, these same states ganged up to recognize East Timor’s right to self-determination and acted as midwives for its birth as an independent state.”).
114 Scholars have already noted the support of the United Nations for the East Timorese struggle for independence. See, e.g., d’Aspremont, supra note 108, at 8-10.
116 Charney, supra note 104, at 463
117 Charney, supra note 104, at 463.
119 Id.
120 Id.
121 Id.
122 Id.
123 Id.
124 Id.
125 Id.
able to re-establish control over most Chechen regions. In February 2000, Russian forces recaptured Grozny, the Chechen capital, and the pro-independence Chechen regime crumbled. In the following years, Russia was successful in installing a pro-Russia Chechen regime, and the most prominent separatist leaders died. Nonetheless, violence still occurs in the North Caucasus, and Chechnya remains a troubled and potentially explosive region.

Chechnya illustrates the idea of a struggling minority group, seeking self-determination rights from the central government (Russia), unaided by the Great Powers. Alone, Chechnya could not face the Russian military power and could not undertake the economic challenges of achieving viability as an independent state. Some have suggested that it is the Chechen inability to build democratic institutions and peace during its de facto independence, in between the two Chechen Wars, which caused the Great Powers to refuse to recognize Chechnya as a legitimate self-determination seeking entity. However, I posit that it is the Russian membership in the Great Powers, and precisely, the Russian veto power on the Security Council, which directly caused the lack of international involvement in Chechnya. Chechnya could not and cannot achieve independence alone.

C. Kosovo

Kosovo had been an autonomous province of Serbia, one of the six republics within the Socialist Federal Republic of Yugoslavia (“SFRY”). When the SFRY dissolved in the early 1990’s, Kosovo remained a part of the SFRY successor, the Federal Republic of Yugoslavia (“FRY”) first, then a part of Serbia and Montenegro, and when Montenegro broke away from the latter, Kosovo remained a part of the sole Serbian state. Until the late 1980’s, Kosovo had the status of an autonomous province within the SFRY and exercised important regional self-governance functions. More importantly,

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126 Id.
127 Id.
128 Id.
129 Id.
130 Scholars have already noted the lack of international support for Chechnya, attributing it to the fact that Russia was a major military and economic power, holding veto power on the U.N. Security Council. See Charney, supra note 104, at 459.
131 Charney, supra note 104, at 462-63.
132 Even scholars like Charney, who advances the idea that the Chechens’ inability to build democratic institutions contributed to the lack of international support for their cause, freely admit that it is at least possible that Russia’s tremendous power as a state may have prevented the Chechens from garnering significant international support. Charney, supra note 104, at 459. In fact, the Chechen situation is similar to that of Tibetans, whose central government (China) also holds a powerful seat on the international legal scene and may thus prevent the Tibetans from obtaining true international support.
133 Brown, supra note 13, at 238.
134 Brown, supra note 13, at 238-240.
135 The 1974 SFRY Constitution granted Kosovo the status of an autonomous province within the country’s federal structure. Gruda, supra note 13, at 387. Under the terms of the 1974 Constitution, Kosovo had the
its predominantly ethnic Albanian population enjoyed multiple rights, such as the right to education in the Albanian language, the right to Albanian language media, the right to celebrate cultural holidays and to generally preserve its ethnic structure and belonging. However, in response to ethnic Albanian uprising movements throughout Kosovo, staged by guerilla-like paramilitary groups, the Serbian leadership undertook draconian measures in the late 1980’s to curb the upheaval. Thus, Kosovo’s autonomous province status was removed, and the Albanian population was deprived of important civil and political rights.

In 1999, when the former Serbian president Slobodan Milosevic engaged in a brutal tactic of oppression – once again in response to ethnic upheavals in Kosovo staged by the Kosovo Liberation Army (“KLA”), a separatist movement operating in Kosovo – the international community responded with force. North Atlantic Treaty Organization (“NATO”) countries launched a series of air strikes on the territory of Serbia, which ultimately forced Milosevic to sign a peace agreement with the Kosovars at Rambouillet, France, in June 1999. Under the terms of the Rambouillet Peace Agreement and subsequently, United Nations Resolution 1244, Kosovo was to be administered by a United Nations (“UN”) provisional authority, the United Nations Mission in Kosovo (“UNMIK”), its safety was to be guarded by a NATO-led military force, KFOR, and

following rights: the right to adopt and change its constitution; the right to adopt laws; the right to exercise constitutional judicial functions and to have a constitutional court; judicial autonomy and the right to a Supreme Court; the right to decide on changes of its territory; the right to ratify treaties that were concluded with foreign states and international bodies; the right to have independent organs and ministries within the local government. Id.

Henry H. Perritt Jr., Final Status for Kosovo, 80 CHI.-KENT L. REV. 3, 7 (2005) (noting that Kosovar Albanians were allowed to open an Albanian-language university in Pristina in 1969, and that the institutional changes under the 1974 SFRY Constitution resulted “in the growing Albanization of educational, political, and legal institutions.”); see also Gruda, supra note 13, at 387.

Perritt, supra note 135, at 8 (describing the measures undertaken by Slobodan Milosevic beginning in 1989 to curb the Albanian upheaval).

Brown, supra note 13, at 263 (noting that amendments to Serbia’s constitution in 1989 and 1990 negated the Kosovar autonomy.).

Perritt, supra note 135, at 8 (describing the Serbian campaign of ethnic cleansing in Kosovo, accompanied by massive violence against the Kosovar Albanians by Serbian paramilitary, military and police forces).

Paul R. Williams, Earned Sovereignty: The Road to Resolving the Conflict Over Kosovo’s Final Status, 31 DENV. J. INT’L L. & POL’Y 387, 397 (2003) (noting that as a result of Serbian oppression, “some elements of the Kosovar Albanian population formed the Kosovo Liberation Army (“KLA”), which murdered members of the Serbian police and military forces and perceived Kosovar Albanian collaborators.”); see also Perritt, supra note 135, at 8 (noting that the KLA began attacking Serbian police and military facilities in Kosovo).

Perritt, supra note 135, at 8 (indicating that NATO began its bombing campaign “aimed at ending ethnic cleansing and protecting human rights in Kosovo”); see also Iain King & Whit Mason, PEACE AT ANY PRICE: HOW THE WORLD FAILED KOSOVO 43-45 (2006) (describing the events leading up to the NATO air strikes in the former Yugoslavia) [hereinafter “King & Mason”].

Hasani, supra note 75, at 320 (noting that the refusal of Serbia to agree to the Rambouillet Accords caused the NATO bombing campaign); see also Brown, supra note 13, at 240.
subsequent negotiations were to take place in the near future, to decide about the true fate of the province.143

Once Milosevic stepped down as Serbia’s president and leader, the Serbian outlook and its position toward the west changed.144 Under the Milosevic rule, Serbia largely ignored the west and leaned on its historical ally, Russia, for support. After Milosevic was ousted from power, Serbia turned toward the west. It became clear that in order to join western Europe – and possibly become a member of the EU – Serbia had to sacrifice Kosovo, or to at least refrain from using force in order to prevent it from breaking off.145 The relevant players, including the Serbian leadership, the Kosovar representatives, and UN and EU representatives, negotiated several times, but because of strong differences about the future of Kosovo, they were never able to reach consensus.146 In fact, Serbia, while pragmatically recognizing the need to accommodate western demands,147 maintained its position that Kosovo remain a territorial part of

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143 See Interim Agreement for Peace and Self-Government in Kosovo, Feb. 23, 1999, UN Doc. S/1999/648 (June 7, 1999), available at http://www.state.gov/www/regions/eur/ksvo_rambouillet_text.html [hereinafter Rambouillet Accords]. Moreover, Security Council Resolution 1244 directly references the Rambouillet Accords for the purpose of determining Kosovo’s future status. S.C. Res. 1244, UN SCOR 54th Sess., 4011th mtg. ¶11(e), UN Doc. S/RES/1244 (1999) [hereinafter Resolution 1244]. Thus, Resolution 1244 represents the legal foundation upon which “the civilian and military branches of the international administration in Kosovo are based.” Hasani, supra note 75, at 323; Resolution 1244; see also Gruda, supra note 13, at 356. Under Resolution 1244, Kosovo was occupied by a multilateral force (KFOR) and administered by a United Nations Mission in Kosovo (UNMIK). For a detailed discussion of the UN administrative regime over Kosovo under the terms of the Rambouillet Agreement, see Hasani, supra note 75, at 323-325.

144 Williams, supra note 139, at 415 (describing the political changes in Serbia as a result of Milosevic’s removal from office).

145 For example, during a recent trip to Serbia, in March 2008, I witnessed a peaceful political protest on the streets of Novi Sad, the capital of the northern province of Vojvodina, where protesters were carrying banners with signs reading: “We have a right to the European future” and “Don’t let Kosovo slow us down.” This demonstrates that a portion of the Serbian population seems aware of the necessity to let go of Kosovo in order to have access into Europe.

146 Viola Trebicka, Recent Development: Lessons from the Kosovo Status Talks: On Humanitarian Intervention and Self-Determination, 32 YALE J. INT’L L. 255, 256-258 (2007) (describing the so-called status talks on the future of Kosovo and the fact that a “brokered political agreement… has proven much more elusive than was first thought”).

147 Timothy Garton Ash, This dependent independence is the least worst solution for Kosovo, The Guardian, available at http://www.guardian.co.uk/world/208/feb/21/kosovo (Feb. 21, 2008) (comparing the loss of Kosovo for Serbia as a loss of a “gangrenous arm” and concluding that this is a “precondition of recovery.”) [hereinafter “Garton Ash”].
Serbia with strong regional autonomy. Kosovo, on the other hand, insisted that it deserved independence.

On February 17, 2008, backed by powerful world countries like the United States, the United Kingdom and France, the Kosovar Parliament voted a declaration of independence. In the few days following the Kosovar declaration of independence, the United States, as well as about twenty EU countries formally recognized Kosovo as a new state. Thus, Kosovo illustrates a situation similar to that of East Timor: a struggling minority group, seeking self-determination is aided by the Great Powers and is ultimately able to achieve independence from its central government, Serbia. Without the help of the Great Powers, and precisely, the military intervention staged by the Great Powers through NATO, the Kosovars would not have been able to secede from Serbia. Moreover, without the political support of the Great Powers and the Great Powers’ willingness to recognize Kosovo as a new state, the Kosovars would not have been able to assert their independence from Serbia as easily and as flawlessly as they did in February 2009.

D. Georgia

South Ossetia is an autonomous administrative district of Georgia, the former Soviet Union republic, and Abkhazia is an autonomous republic also within Georgia. These two provinces have functioned as de facto states in the recent years, and have spurred international controversy during the summer of 2008, when Russia decided to

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148 In fact, the day after the Kosovar declaration of independence, the Serbian President, Boris Tadic, appealed to the UN Security Council to declare Kosovo’s “unilateral and illegal” declaration of independence “null and void,” because Kosovo’s separation violates Security Council Resolution 1244 which reaffirms Serbia’s sovereignty and territorial integrity. UNMIK News Coverage, Ban Ki-moon urges restraint by all sides after Kosovo declares independence (Feb. 18, 2008), available at http://www.unmikonline.org/news.htm (last visited on May 12, 2008).

149 Trebicka, supra note 145, at 255 (observing that the Kosovar Albanians have demanded their right to self-determination, which would lead to secession).


151 For example, as of February 18, 2008, the United States, the United Kingdom, France and Belgium had all expressed support for the “new state of Kosovo.” Id. Note however, that several states expressed their opposition to the Kosovar independence, including Spain, Russia, China, Indonesia, and Sri Lanka. Nicholas Kulish and C.J. Chivers, Kosovo is Recognized but Rebuked by Others, The New York Times, available at http://www.nytimes.com/2008/02/19/world/europe/19kosovo.html (Feb. 19, 2008) (last visited on May 12, 2008) [hereinafter “Kulish and Chivers”].

152 In fact, in October 2008, the U.N General Assembly agreed to the request of Serbia to have the ICJ legally examine the validity of the Kosovar secession. The Boston Globe, Kosovo blunder goes to court, (Oct. 12, 2008). Thus, it will be interesting to read the World Court’s legal pronouncement on the case of Kosovo – whether the World Court offers a legal justification for the separation will be indicative of whether the separation was legally v. politically justified.

support the two provinces by sending military troops to Georgia.\textsuperscript{154} The Russian intervention evolved into war between Georgia on one side and Russia, South Ossetia and Abkhazia on the other.

In August 2008, when the Georgian armed forces pushed into South Ossetia, Russia accused Georgia of genocide, claiming that thousands of South Ossetian civilians were killed by the Georgian troops.\textsuperscript{155} In response, Russia sent troops into South Ossetia and launched air strikes on Georgian territory.\textsuperscript{156} After a few days of heavy fighting Georgian troops were ejected from South Ossetia.\textsuperscript{157} Meanwhile, the Russian military troops stationed in Abkhazia began marching into Georgia; this advance into Georgia was accompanied by reports of widespread looting, burning, and killing of civilians by Ossetian militia.\textsuperscript{158} On August 12, the Russian president ordered a halt to Russian military operations in Georgia, and a peace plan was brokered by the EU, which Russia, Georgia, as well as the South Ossetian and Abkhazian separatist leaders signed and endorsed.\textsuperscript{159}

Yet, Russia has refused to withdraw its military troops from Georgia. Russia has also signalled no intention to end its military presence in the disputed Georgian regions of Abkhazia and South Ossetia.\textsuperscript{160} In fact on August 25, 2008, Russia recognized these as independent states.\textsuperscript{161} Russia now says that its troops stationed in Abkhazia and South Ossetia are guests of the newly-born nations, and their status is not regulated by the above-mentioned peace plan.\textsuperscript{162}

Currently, the status of South Ossetia is being negotiated between the central government of Georgia and the Russian-supported separatist government of South Ossetia.\textsuperscript{163} Recently, these negotiations have broken down in light of Russia's decision to reinforce the region militarily and give Russian passports to South Ossetians.\textsuperscript{164} The government of Georgia has expressed that it views these moves as attempts by Russia to annex the region effectively.\textsuperscript{165} The Georgian government levels the same criticism against Russian involvement in Abkhazia, which currently remains a province of Georgia, but which operates as a de facto state.\textsuperscript{166}

\textsuperscript{154}Id.
\textsuperscript{155}Id.
\textsuperscript{156}Id.
\textsuperscript{157}Id.
\textsuperscript{158}Id.
\textsuperscript{159}Id.
\textsuperscript{160}Id.
\textsuperscript{162}http://en.wikipedia.org/wiki/Georgia_(country)#cite_note-52 (last visited on Dec. 9, 2008).
\textsuperscript{163}Id.
\textsuperscript{164}Id.
\textsuperscript{165}Id.
\textsuperscript{166}Id.
Most of the western Great Powers have expressed their support of Georgia and have refused to recognize the independence plight of South Ossetia and Abkhazia.\footnote{Most NATO countries would prefer that Georgia remain intact, as they have been exploring the possibility of Georgia joining NATO. Steven Erlanger, \textit{NATO Duel Centers on Georgia and Ukraine}, The New York Times, (Dec. 1, 2008).} Even Russia, although it officially supports such independence, is rumored to in fact want to annex these two regions.\footnote{\textit{Id.}} Thus, South Ossetia and Abkhazia illustrate examples of unsuccessful self-determination struggles, where a minority group or a people is unsupported by the Great Powers and is thus unable to achieve independence. In fact, the South Ossetian leader has recently expressed his frustration at this lack of support by the Great Powers, by complaining that his country has not been able to become independent, although it has a better legal case for independence than Kosovo, which did become independent.\footnote{\textit{Id.}}

\section*{V. Application of Self-Determination Rights in the Modern World}

From the above discussion and case studies, we have seen that the right to self-determination for different minority groups or peoples varies from region to region.\footnote{See supra Part IV.} While the Timorese and the Kosovars were able to fully exercise their rights to the most extreme form of self-determination, leading toward remedial secession, the Chechens, the South Ossetians and the Abkhazians, have been denied such rights.\footnote{\textit{Id.}} Arguably, the latter three peoples have been denied any form of self-determination, as many have asserted that these peoples’ rights are routinely oppressed by their mother states.\footnote{On the oppression of Chechnya by its mother-state, Russia, see supra part IV.B. On the independence struggles of South Ossetia and Abkhazia, see supra Part IV.D.} What does this suggest about the modern-day contours of the right to self-determination? What are the modern-day criteria which a people must fulfill in order to be able to legitimately gain some degree of self-determination?

I argue that a people must satisfy the following four criteria: it has to show that it has been oppressed; that its central government is relatively weak; that it has already been administered in some form by some international organization; and that it has the support of the Great Powers.

First, the people seeking to exercise its right to self-determination must prove that it has been subject to oppression and that its citizens have faced harsh human rights abuses and violations. Typically, a people attracts global attention only when it can show how horrifically it is being treated and how abusive its central government is. Instances of mild human rights violations typically do not attract the same level of international political and media scrutiny, and central governments which commit minor minority
group abuses typically go unnoticed. Thus, peoples that have managed to showcase their struggles have always been able to demonstrate a high level of suffering and a consistent policy of harsh abuse by the central government. Second, the same people must show that its central government – the “rogue” regime committing abuses – is relatively weak and cannot properly administer the people’s province or region. In fact, none of the peoples across the globe that have succeeded in asserting their rights to self-determination have been governed by strong, powerful governments. Typically, self-determination seeking groups have been able to demonstrate that their central government, although claiming that it wants to govern such groups, is really militarily, politically, or structurally unable to assert proper control. Thus, typically, break-away regions have been marred by civil unrest and violence, that have further contributed to the idea that these peoples or groups, in order to have any kind of civic stability, must be allowed to separate. Third, the self-determination seeking people must show that some form of international administration of its region has been needed in the recent years, and that international authorities have had to govern because of the brutality and inefficacy of the central government. This criterion is linked to the second one: peoples seeking self-determination have successfully shown that their central governments were weak, causing violence and unrest, and that international authorities have needed to step in to preserve or reestablish peace. Thus, international organizations and groups have been involved in virtually all self-determination seeking regions. Finally, the self-determination-seeking people must prove that external actors, including the Great Powers, view its struggle as legitimate, and that external actors, including the Great Powers, are ready to embrace it as a new sovereign partner. I allege that this ultimate criterion is the most important one, and that it routinely determines the fate of various peoples struggling for the recognition of their rights across the globe.

173 The suffering of many minority groups has remained isolated, garnering no or little support from the international community. The violence committed by government-backed militias in the Sudanese Darfur region attracted little international help until 2005-06; the Rwandan genocide was not prevented by the world community, Kelly, supra note 1, at 381 (mentioning the “unchecked genocide in Rwanda”), and the Kurds have been left on their own, Kelly, supra note 1, at 396 (describing the world inaction when the Iraqi president Saddam Hussein used chemical weapons against Kurdish people in Iraq in 1988). In addition to these groups’ struggles, there are many other self-determination seeking groups around the globe that have been fighting for their cause in relative obscurity. Examples of such groups include the Kashmiris fighting for independence from India, the Basque and the Catalan (from Spain), The Liberation Tigers of Tamil Eelam (from Sri Lanka), and The Moro Islamic Liberation Front (from the Philippines). See Sreeram Chaulia, supra note 113.

174 The Indonesian rule over East Timor had been weakened by the time the Timorese asserted their independence rights, and the same was true of the Serbian reign over Kosovo. See supra Parts IV.A. and IV.C.

175 Id.

176 International Law, Politics and the Future of Kosovo (panel), the American Society of International Law Annual Meeting, Washington, D.C., April 9-12, 2008, audio of session available at www.asil.org (last visited on June 3, 2008) [hereinafter “ASIL Panel”] (two speakers, Prof. Paul Williams and U.S. State Department lawyer John Bellinger, seemed to agree that some form of international administration is a pre-requisite to a people’s achievement of complete independence).

177 East Timor had been guarded by a U.N. force, called UNTAET, see http://en.wikipedia.org/wiki/East-timor (last visited on Dec. 10, 2008); and Kosovo had been administered by a U.N. force called UNMIK, see Sterio, supra note 10, at.
Whether the Great Powers decide to legitimize a people’s struggle for self-determination is crucial for the outcome of such a struggle. First, the Great Powers control hugely important media outlets and the global access to information.178 If the Great Powers decide not to give media coverage to a struggling people or region, that people will remain unnoticed on the global scene, and its suffering will attract no significant external involvement. Alternatively, its suffering will be downplayed by the Great Powers and will be discarded as not warranting true intervention. Second, the Great Powers have, throughout the years, provided key military and logistic support to states across the globe. Some central governments have been able to retain control over portions of their territories simply because of important external support by the Great Powers.179 Conversely, some central governments have not enjoyed such support and have not been able to control break-away regions and popular movements within their territories.180 Thus, it is implicitly the Great Powers that contribute toward the stability, or lack thereof, of central government across our planet. Third, the Great Powers control the United Nations system through their veto powers on the Security Council.181 It is only when the Great Powers agree that the Security Council can authorize the deployment of military troops, peacekeepers, or international administrators to a troubled region.182 Thus, peoples whose struggles are not viewed as legitimate by the Great Powers will never be able to garner Security Council support for the creation of some form of an international administration within their region.183

178 See, e.g., Robert A. Schapiro, Contingency and Universalism in State Separation of Powers Discourse, 4 ROGER WILLIAMS U. L. REV. 79, 101 (1998) (discussing the power over national media that the U.S. President has in the United States); Note: The Case Against China Establishing International Liability for China’s Response to the 2002-2003 SARS Epidemic, 19 COLUM. J. ASIAN L. 519, 557, n. 253 (2006) (discussing the deliberate policy of media control that the Chinese government undertakes); Stephen J. Rapp, Achieving Accountability for the Greatest Crimes -- the Legacy of the International Tribunals, 55 DRAKE L. REV. 259, 272 (2007) (discussing the powerful role of the media in inciting the Rwandan genocide). These examples illustrate the important role that the media plays domestically and internationally, and the importance of control asserted by powerful governments over their national media.

179 For example, throughout the Cold War, Indonesia was able to retain control over East Timor with the help of some of the Great Powers, namely, the United States, Great Britain, and Australia. Chaulia, supra note 113. Similarly, Turkey has been able to “ward off claims of a separate Kurdistan, thanks to Ankara’s six-decades-long closeness to Washington.” Id. Finally, Israel has been able to ignore Palestinian claims for independence for decades, also with “American blessings.” Id.

180 For example, Indonesia has not been able to retain its grip over the East Timor province, nor has Serbia been able to do so over Kosovo. See supra Part IV.A and IV.C. In both cases, the central governments (Indonesia and Serbia) were unaided by the Great Powers and in both cases, the minority groups (the East Timorese and the Kosovars) were supported by the Great Powers in their self-determination quests. Chaulia, supra note 113.

181 Kelly, supra note 1, at 394.

182 Id.

183 Basically, peoples that struggle for independence from strong, powerful countries, will not succeed because “[l]arge and powerful countries with stable politics such as Russia, China, and India can defend their territorial integrity and are unlikely to become candidates for Kosovo-type challenges.” Chaulia, supra note 113. Moreover, peoples that struggle for independence from countries that are backed by the Great Powers are also unlikely to succeed. “States like Israel and Turkey are proving that, as long as they enjoy American blessings, they can see through secessionism and even undertake cross-borer raids on militants threatening their sovereignty.” Id.
Even the idea of humanitarian intervention, described above, remains embedded in this idea of approval by the Great Powers.\(^{184}\) Humanitarian intervention is always organized, structured, financed, and led by some of the Great Powers; other countries simply do not have enough power and leverage on the international scene. Even proponents of the above-described involuntary waiver of sovereignty theory acknowledge that it is up to the Great Powers to determine when a country has so waived its sovereignty. Haass, when questioned about the issue of who decides when a state is committing atrocious actions that would trigger intervention, seemed to imply that the United States, and possibly the other Great Powers, should so decide.\(^{185}\) According to Haass, the Great Powers should act multilaterally to stop genocide, terrorists, and WMD, outside even of the UN collective security apparatus, and the Great Powers should have flexibility (read: decisionmaking authority) to engage in intervention across the globe.\(^{186}\) Thus, it is the Great Powers’ support, or lack thereof, toward a people’s struggle for some form of self-determination, that determines the outcome of such a struggle. As the above-described case studies demonstrate, all peoples that have successfully exercised some form of self-determination have been supported by the Great Powers.\(^{187}\) The converse is equally true: all peoples that are still living as part of an oppressive, central regime, have been unable to garner the support of the Great Powers.\(^{188}\)

The right to external self-determination has become entrenched in the notion of the rule by the Great Powers, which has in turn modified traditional ideas about statehood, recognition, sovereignty and intervention. As described above, an entity seeking to exercise its external self-determination rights must prove to the outside actors, and today, the Great Powers, that it qualifies as a state, and it must persuade those outside actors, and today, the Great Powers, that it ought to be recognized as a new state. As described above, because the Great Powers today are essentially more sovereign than all other states, they may engage in interventions across the globe, and such interventions may aid an independence-seeking people, or may directly impede its struggle for independence. Thus, the Great Powers’ rule has directly affected concepts like statehood, recognition, sovereignty and intervention, and has shaped external self-determination struggles in a particularly political manner. In other words, it is only when a people is supported politically by the Great Powers that it will manage to acquire independence and statehood through the exercise of external self-determination. The legal criteria for external self-determination have become somewhat mooted by the necessity to obtain the political support of the Great Powers for any struggling people on our planet.\(^{189}\)

\(^{184}\) See supra Part III.B.

\(^{185}\) When asked who should decide when a country is so misbehaving to warrant external intervention, Haass responded: “There is no single source of authority or legitimacy…. The United Nations is not yet at the point where it alone can decide what is legitimate and what is not. Well then, who decides? Is it the United States or some other government? The answer is that you have to look at the case at hand and you have to try to make a case in the court of international public opinion... You have to base your actions on norms.” Richard N. Haass, Pondering Primacy, 4 GEO. J. INT’L AFF. 91, 92-93 (2003).

\(^{186}\) Kelly, supra note 1, at 409.

\(^{187}\) See supra Part IV.

\(^{188}\) Examples of such peoples include the Chechens, the South Ossetians and the Abkhazians, as well as Tibetans. See supra Part IV; see also Chaulia, supra note 113 (describing that Tibet has been ruled and oppressed by China over the last 40 years).

\(^{189}\) A perfect example of this assertion would be the different treatment by the world community of the Kosovars versus the Chechens in these respective groups’ plights for self-determination. “While in Kosovo
One may wonder about the soundness of this rule by the Great Powers. After all, one may argue that if several key states agree on something or disagree on something, their consensus should play a crucial role in the decided issue. For example, if the most important states on our planet agree that Kosovo ought to become independent, then one may argue that the independence is a good solution. However, I believe that the rule by the Great Powers inherently undermines state equality and the entire sovereignty-based system of global international relations. While a decision by the Great Powers may be politically appropriate and important for the Great Powers, it should not have any bearing on the legality of any potential separation. Thus, I believe that it is unfortunate that the right to self-determination in the modern-day world entails not only legal, but also political criteria. This topic, however, shall remain the subject of a future article.

VI. Conclusion

A people under modern-day international law accrues the right to some form of self-determination if it can demonstrate that it has been subjected to harsh oppression, that it has a relatively weak central government, that some type of international administration of its region has already taken place, and that it has garnered the support of the most sovereign states on our planet, the so-called Great Powers. It is my conclusion that the last criterion tends to be the most important one, and that it directly influences the outcome of most self-determination struggles in the modern world. Thus, the right to self-determination seems to entail a mixture of legal and political criteria, with the latter often prevailing over the former. While I believe that this situation, termed the rule by the Great Powers, is inherently at odds with the idea of state sovereignty and equality, this observation remains to be explored in a future academic endeavor.

the international community essentially endorsed the Albanian Kosovar’s claims to self-determination, in Chechnya the reactions were more muted, essentially focusing on opposition to the violence used by the Russians against the Chechens without reference to their possible right to self-determination, within or without Russia. This distinction may be easily dismissed by experts in international relations due to the fact that the Federal Republic of Yugoslavia (FRY) is a relatively poor country that was run by a person already indicted by the ICTY for international crimes – Slobodan Milosevic- and his supporters. On the other hand, Russia despite its troubles was a significant military power with substantial economic resources…Furthermore, it is a permanent member of the UN Security Council, holding the veto right.” Charney, supra note 104, at 458-59.

This is what Haass advocates: a concert of Great Powers, working together outside of the confines of the U.N. system, as the world’s policemen. Kelly, supra note 1, at 409.

For example, scholars have already noted the uneven application of the involuntary sovereignty waiver theory, asserting that this theory only applies “to states that can physically withstand the intervention (China and Russia – which are abusing minority ethnic groups within their borders, or North Korea – pursuing WMD) or those states that are on otherwise friendly terms with the proposed interveners (Pakistan – pursuing WMD, or, although not rising to the level of genocide, Mexico – abusing indigenous nationals in Chiapas, and Turkey – repressing its Kurdish population). Consequently, the policy only operates against countries such as Serbia, Afghanistan, and Iraq that cannot resist American power.” Kelly, supra note 1, at 413.