Handbook on the Prevention and Resolution of Self-Determination Conflicts

PERMANENT MISSION
OF THE PRNICIPALITY OF LIECHTENSTEIN
TO THE UNITED NATIONS
NEW YORK

LIECHTENSTEIN INSTITUTE
ON SELF-DETERMINATION
AT PRINCETON UNIVERSITY

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Liechtenstein Institute on Self-Determination
School of Public and International Affairs
Princeton University
Princeton, New Jersey 08544
USA
Telephone: 609.258.6200
Facsimile: 609.258.5196
Electronic Mail: lisd@princeton.edu
Website: lisd.princeton.edu
Facebook: www.facebook.com/princeton.lisd
Twitter: @PrincetonLISD

HANDBOOK ON THE PREVENTION AND RESOLUTION OF SELF-DETERMINATION CONFLICTS

Permanent Mission of the Principality of Liechtenstein to the United Nations, New York
Liechtenstein Institute on Self-Determination at Princeton University

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This Handbook on the Prevention and Resolution of Self-Determination Conflicts includes a foreword by His Serene Highness Prince Alois of Liechtenstein; an opening letter from Christian Wenaweser, Andrew Moravcsik, and Wolfgang Danspeckgruber; an introduction, and the Guidelines on the Prevention and Resolution of Self-Determination Conflicts, which have been developed by the Liechtenstein Mission to the United Nations and the Liechtenstein Institute on Self-Determination at Princeton University. In addition, the handbook presents four expert case studies of self-determination conflicts. These papers are submitted under the sole authority of their authors, while the publishers of the handbook take responsibility for any textual errors in the publishing and printing of this work.

Contents

Foreword v

Opening Letter vii

Introduction 1

Guidelines on the Prevention and Resolution of Self-Determination Conflicts 5
- General Guidelines for Addressing Self-Determination Conflicts 7
- Annex 1: Guidelines on Conflict Prevention 10
- Annex 2: Guidelines on Conflict Resolution 18
- Annex 3: Guidelines on Self-Governance Arrangements 24

Case Studies
- Aceh Case Study 27
- Bougainville Case Study 36
- Mindanao Case Study 42
- Northern Ireland Case Study 53

Case Study Authors 62

Foreword

Self-determination is at the heart of the world order created by the United Nations (UN) as the basis for the establishment of all states as sovereign equals and as the foundation for human rights in Common Article 1 of the UN's twin Human Rights Covenants. The Liechtenstein Initiative on Self-Determination has focused on applying the principle of self-determination within states, with the effect of preventing and resolving conflict without resorting to secession. In so doing, the Initiative looks to uphold both territorial integrity and self-determination.

Issues of self-determination are increasingly prevalent in the world's conflicts, in part due to the importance of identity in today's political disputes and to the role of self-determination in historical grievances, including colonial histories. The endurance of questions of identity and history makes them amongst the most difficult to resolve. But it is only when we deal honestly and earnestly with root causes like these that we can make lasting change for the better.

In this context I very much welcome this handbook, which has emerged from a collaboration between the Liechtenstein Institute on Self-Determination and the Liechtenstein Mission to the UN, both of which the Princely House has long been involved with on the topic of self-determination. The handbook addresses these issues by looking for ways in which states can work with internal communities to resolve grievances in good faith before they develop into conflict and to resolve conflicts in ways that leads to lasting, sustainable peace. It sets out a way forward for those involved in preventing and resolving conflicts over issues of self-determination based on law, dialogue, and governance. It also builds on the work already done by international institutions, mediators, states, and civil society to foster sustainable peace and to prevent conflict, both of which are also priorities of the UN Secretary-General. I hope that those committed to pursuing peace in situations where questions of self-determination are relevant will find it a clear-eyed and practicable starting point.

Liechtenstein will continue to be a strong supporter of the application of the right to self-determination as a way to uphold sustainable peace, good governance, and human rights through our engagement in international institutions, including the UN and, more widely, with those working day by day to address the needs of those seeking self-determination.

H.S.H. Hereditary Prince Alois of Liechtenstein

Opening Letter

It is our privilege to present this *Handbook on the Prevention and Resolution of Self-Determination Conflicts*. The handbook is a product of the collaborative efforts of academics, mediators, diplomats, and experts to address the role of self-determination in the causes of and solutions to conflict. The complex questions of identity and equality that are at the heart of self-determination conflicts can be particularly difficult to resolve. The handbook is a novel attempt, grounded in concrete examples, to put forward a range of good practices for those seeking to do so across the conflict cycle.

The handbook is the latest product of a commitment to the right of self-determination that goes back to the beginning of Liechtenstein's membership of the United Nations, 30 years ago. Liechtenstein's first initiative at the UN was to strengthen the application of the right to determination—an effort that has given way to a rich dialogue between the political sphere and academia on how expressions of self-determination could help to reduce intrastate conflict. The long-standing and close cooperation between the Mission of Liechtenstein to the United Nations in New York and the Liechtenstein Institute on Self-Determination at Princeton University, established for this very purpose, is a showcase for the useful results such a sustained interdisciplinary exchange can yield.

The handbook supports the perspective that prevention is the best approach to conflict, in line with UN Secretary-General António Guterres's focus on peacebuilding and sustaining peace. It also emphasizes the need to find strategies for effective conflict resolution that lay the groundwork for the prevention of future self-determination conflicts. This can only be achieved by addressing the underlying self-determination questions at their root. Although these are often thorny issues, and therefore difficult to tackle, in the long run, recognizing self-determination conflicts and addressing them as such can help protect states' territorial integrity and uphold human rights.

We are grateful to all who have given advice, insight, and support during the process of producing the handbook. In particular, we thank the attendees of the two conferences, the first held by the Liechtenstein Institute on Self-Determination and the Liechtenstein Mission to the UN in New York, in Triesenberg, Liechtenstein, in March 2016, and the second held in Princeton, New Jersey, U.S.A., in December 2018, for their constructive ideas.

The handbook includes four case studies: Aceh, Bougainville, Mindanao, and Northern Ireland. Each presents different lessons for those seeking to prevent and resolve self-determination conflicts and to explicate some of the practical challenges that have informed the creation of the handbook. We are grateful to the authors of the case studies: Dr. Chris Chaplin, Dr. Anna Dziedzic, Dr. Steven Rood, Prof. Cheryl Saunders, and Dr. Dawn Walsh, for their insightful contributions.

In addition, the handbook provides what we believe are the first guidelines that are specifically aimed at addressing the role of self-determination in conflict. We hope that they will be a valuable resource for those working to prevent and resolve future self-determination conflicts. The Guidelines on the Prevention and Resolution of Self-Determination Conflicts have been a collective effort, benefiting from the insights of academic and legal experts and practitioners. We are deeply grateful to Nina Caspersen, Joshua Castellino, Anna Dziedzic, Rohan Edrisinha, John Packer, Francesco Palermo, Timothy W. Ryback, Cheryl Saunders, Fernand de Varennes, Annelies Verstichel, Dawn Walsh, and Lamberto Zannier in particular for their time, patience, and wisdom in response to earlier drafts, as well as to Jennifer Widner for her review of the completed manuscript.

March 2021

Christian Wenaweser
Ambassador, Permanent Representative of the Principality of Liechtenstein to the United Nations, New York

Andrew Moravcsik
Director, Liechtenstein Institute on Self-Determination at Princeton University

Wolfgang Danspeckgruber
Founding Director, Liechtenstein Institute on Self-Determination at Princeton University

Introduction

Liechtenstein's commitment to the role of self-determination in conflict prevention and resolution is a long-standing element of our international engagement. The first initiative of the Liechtenstein Mission to the United Nations, aimed at strengthening the link between conflict prevention and self-determination, resulted in the creation of the Liechtenstein Institute on Self-Determination at Princeton University in 2000. A productive partnership has since been forged between these two institutions, of which the *Handbook on the Prevention and Resolution of Self-Determination Conflicts* is the latest product.

The handbook was conceived chiefly as the result of two meetings on self-determination held jointly by the Liechtenstein Institute on Self-Determination and the Liechtenstein Mission to the UN: *"Models of Self-Governance as Tools to Promote Peace and Stability in Europe,"*[1] held in March 2016, in Triesenberg, Liechtenstein, and *"Self-Determination in Conflict Prevention and Resolution,"*[2] held in December 2018, in Princeton, New Jersey, U.S.A. In these meetings, participants discussed the relationship between self-determination and conflict, as well as ways that self-determination conflicts may be prevented and resolved. These discussions drew on the tensions and links between self-determination, minority rights, autonomy and self-governance, and mediation, all of which are key elements of the handbook.

Both meetings took as a starting point the issue that conflicts seen by actors involved as encompassing questions of self-determination are proliferating and are among the most intractable tests that the international community faces today. The questions of identity, autonomy, and responsibility that underpin these conflicts create grievances that may long precede violence, but may not be effectively addressed by measures taken to end it. The handbook proposes that

1. *"Letter dated 15 June 2016 from the Permanent Representative of Liechtenstein to the United Nations addressed to the Secretary-General."* UN Doc. A/70/955–S/2016/547 <https://digitallibrary.un.org/record/833237>.

2. *"Letter dated 10 July 2019 from the Permanent Representative of Liechtenstein to the United Nations addressed to the Secretary-General."* UN Doc. A/73/945 <https://digitallibrary.un.org/record/3813211>.

acknowledging the existence of grievances over questions of self-determination, defined broadly as a conflict driver in itself, can lead to earlier and more effective conflict prevention, can help to clarify relevant actors and their aims, and can foster more sustainable conflict resolution processes. Early and sustainable intervention is at the same time more likely to uphold the territorial integrity of states and prevent the "rupture" caused by secession. On this basis, the handbook—in particular the guidelines enclosed—puts forward a novel framework that can assist those seeking to prevent and resolve self-determination conflicts, including states, mediators, affected communities, and civil society.

The handbook has been informed by a range of existing literature that analyzes the issues raised in and by self-determination conflicts. Perhaps most notable among these is the attention paid to drivers of and solutions to self-determination conflicts by intergovernmental bodies and institutions. The work of the Organization for Security and Co-operation in Europe (OSCE) High Commissioner on National Minorities, which aims to prevent interethnic conflicts that often involve questions of self-determination, has been a key starting point, in particular the *Lund*[3] and *Bolzano/Bozen*[4] recommendations. The World Bank-United Nations *Pathways for Peace*[5] report also raises the role of aspirations for greater self-determination in exacerbating conflicts, as well as the potential for decentralization, devolution, and territorial self-governance to be part of solutions to them. Where the prevention and resolution of self-determination conflicts involve Indigenous peoples, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)[6] provides an important tool providing for the right to self-determination for Indigenous peoples in Articles 3 and 4, the latter of which explicitly links self-determination to the right to autonomy and self-government. UN specialized agencies have also addressed the link between conflict prevention and self-determination, most comprehensively in UNESCO's report of a 1998 conference on *The Implementation of the Right to Self-determination as a Contribution to Conflict Prevention*.[7]

3. Organization for Security and Co-operation in Europe (OSCE). 1999. *The Lund Recommendations on the Effective Participation of National Minorities in Public Life.* High Commissioner on National Minorities. 1 September <https://www.osce.org/hcnm/lund-recommendations>.

4. Organization for Security and Co-operation in Europe (OSCE). 2008. *The Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations*. High Commissioner on National Minorities. 2 October <https://www.osce.org/hcnm/bolzano-bozen-recommendations>.

5. United Nations; World Bank. 2018. *Pathways for Peace: Inclusive Approaches to Preventing Violent Conflict*. Washington, D.C.: World Bank <https://www.pathwaysforpeace.org>.

6. UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly, 2 October 2007, A/RES/61/295<https://digitallibrary.un.org/record/606782>.

7. Walt van Praag, Michael C. van, and Onno Seroo. 1998. Eds., *The Implementation of the Right to Self-determination as a Contribution to Conflict Prevention—Report of the International Conference of Experts Held in Barcelona from 21 to 27 November 1998.* UNESCO Division of Human Rights, Democracy, and Peace, and UNESCO Center of Catalonia <https://digitallibrary.un.org/record/354875>.

Academic contributions have also explicated the scope and breadth of self-determination conflicts, as well as attempts to prevent and resolve them. *The Self-Determination of Peoples*,[8] a volume edited by Wolfgang Danspeckgruber, Founding Director of the Liechtenstein Institute on Self-Determination, is an important point of reference for the handbook. Other scholarship that explicitly addresses the category of self-determination conflicts includes Marc Weller's *Settling Self-Determination Conflicts: Recent Developments*[9] and Nina Caspersen's *Peace Agreements*,[10] which focuses specifically on self-determination, or separatist, conflicts. In addition, practitioners have discussed the link between self-determination and peace processes, notably the recent piece on *Self-determination and Peace Processes*[11] published by Conciliation Resources, an international peace-building organization. The work cited above is supplemented by drawing on scholarship from a range of related issues, including but not limited to autonomy, federalism and self-government, minority and indigenous rights, transitional justice and historical memory, and conflict resolution and mediation. In addition, the work of area scholars and civil society organizations has been important to draw lessons from relevant situations.

The drafting of the guidelines has benefited from a collaborative process. The idea of the handbook as a whole was first included in the Recommendations and Next Steps section in the report of the aforementioned meeting of March 2016, and on this basis, an initial draft of the guidelines was shared with a small group of experts during the December 2018 meeting. It was subsequently developed through an iterative approach with a range of experts on self-determination conflicts, as well as with subject matter experts who have brought a wide range of expertise and experience to the table. An ongoing conversation between the Liechtenstein Mission to the UN and the Liechtenstein Institute on Self-Determination helped to refine later drafts. We believe that the resulting guidelines are a worthwhile product.

One theme that emerged from this collaborative process has been the sheer diversity of self-determination conflicts. While clear parallels exist, no two situations emerge from identical historical and causal circumstances; as a result, a variety of measures may be considered to grapple with the root causes of grievance. The guidelines are therefore conceived of as a menu of good practices

8. Danspeckgruber, Wolfgang. 2002. Ed., *The Self-Determination of Peoples: Community, Nation, and State in an Interdependent World*. Boulder, Colo. and London, UK: Lynne Rienner Publishers. <https://www.rienner.com/title/The_Self_Determination_of_Peoples_Community_Nation_and_State_in_an_Interdependent_World>.

9. Weller, Marc. 2009. "Settling Self-Determination Conflicts: Recent Developments." *European Journal of International Law* 20, no. 1: 111–65 <http://www.ejil.org/pdfs/20/1/1788.pdf>.

10. Caspersen, Nina. 2017. Peace Agreements: Finding Solutions to Intra-State Conflicts. Cambridge, UK: Polity <https://www.wiley.com/en-us/Peace+Agreements%3A+Finding+Solutions+to+Intra+state+Conflicts-p-9780745680279>.

11. Packer, John, and Sally Holt. 2020. "Self-Determination and Peace Processes: Pathways and Stumbling Blocks for Conflict Resolution." In Cate Buchanan, ed., *Pioneering Peace Pathways—Making Connections to End Violent Conflict. Accord* 29. London: Conciliation Resources <https://www.c-r.org/accord/pioneering-peace-pathways/self-determination-and-peace-processes-pathways-and-stumbling>.

for relevant actors to consider when fostering the most sustainable solutions to situations in which they are engaged, as opposed to a list of recommendations or best practices. One important category in which historical circumstances require consideration regards those situations in which the UN has already expressed itself or endorsed a particular way forward. On this basis, the guidelines should not be read as addressing these "traditional" claims of self-determination situations without the consent of those affected, in particular those identified by the UN as Non-Self-Governing Territories, or situations of occupation and annexation.

The guidelines are supplemented by four case studies—Aceh, Bougainville, Mindanao, and Northern Ireland—in which experts have briefly illustrated a case in which a recent self-determination conflict was brought to a resolution. The approaches taken across the case studies vary, demonstrating how the wide range of contexts in which self-determination conflicts exist may affect policy responses. We do not hold up the case studies as illustrative of a set of best practices to be followed in toto, but merely depictions of how self-determination conflicts have been resolved in the recent past for consideration. Although the authors do not explicitly address the guidelines in the case studies, they do cover the issues raised within the guidelines as and where instructive for the understanding of that particular case. As such, the case studies are an attempt to ground the guidelines in practice, just as the guidelines provide a broader analysis of topics and approaches that may be applicable across cases.

To conclude, the handbook embraces one very clear and obvious truth: the prevention and resolution of self-determination conflicts is extremely difficult. Addressing issues of self-determination through the approaches recommended in the handbook will not itself bring cooperation or change hearts and minds on intractable, generational issues of identity and history. Nevertheless, the handbook submits that addressing self-determination as a driver of conflict, while not sufficient in itself, is necessary to help foster more resilient and sustainable peace on an issue where much progress is sorely needed.

Guidelines on the Prevention and Resolution of Self-Determination Conflicts

These guidelines have been produced as part of the Liechtenstein Initiative on Self-Determination. They are presented as a menu of good practices that states, communities, and mediators may find instructive in their efforts to prevent and resolve conflicts involving issues of self-determination.[12] *The Liechtenstein Initiative on Self-Determination recognizes that self-determination can be expressed "internally," i.e., without the formation of an independent state, as has previously been made clear with respect to Indigenous peoples. Subsequently, the initiative prioritizes solutions that include forms of self-governance, which it is hoped can provide a pragmatic way to address the desires of the relevant community within a state while maintaining the state's territorial integrity. Measures to implement self-governance are aimed at making governance more responsive to specific community needs, and most commonly involve minority communities and Indigenous peoples. It is noted that international law has developed differently with regard to these two groups.*

As the guidelines are intended to reinforce and complement each other, there will be areas of overlap between them. The possibility of tensions between guidelines is also acknowledged. We trust that those applying the guidelines will find appropriate means to balance competing priorities where they occur in practice.

The guidelines do not address issues of secession or independence*, although it is acknowledged that some conflicts may require solutions that go beyond those suggested here. Along similar lines,* ***the guidelines are also not intended to address "traditional" claims of self-determination, in particular those in the contexts of decolonization or occupation or those identified by the UN "as Non-Self-Governing Territories."*** *This applies to all parts of these guidelines, including its annexes.*

12. The guidelines use *self-determination conflicts* to name such conflicts. As noted elsewhere in this section, the use of this term does not imply that self-determination need be the sole or initial cause of conflict.

The guidelines are aimed at ensuring peaceful and stable states in which distinct communities peacefully coexist, in line with the UN General Assembly and Security Council resolutions on sustaining peace.[13] When a community within a state feels that the central government is not sensitive to its needs, or that its desires for a greater degree of self-governance have not been addressed, this can lead to tensions, which can develop into conflict. These guidelines, respectful of the principle of territorial integrity, note that each state has the final responsibility for determining arrangements to prevent and resolve conflicts within its territory and affecting its population. In discharging these responsibilities, states should consider the long-term consequences of arrangements it makes with communities to address issues of self-determination, with particular regard to peace, stability, security, and human rights.

Preventing and resolving conflicts involving issues of self-determination requires the application of specific measures to address this aspect, given that it directly concerns the institutional structure of the state in relation to the peaceful coexistence of the communities that live inside it. As noted in the relevant UN resolutions, sustaining peace means "ensuring that the needs of all segments of the population are taken into account… ."[14] **Self-determination need not be either the sole cause, or the initial cause, of a conflict for these guidelines to be of use.** Instead, these guidelines put forward a framework for addressing the issue of self-determination in situations in which doing so will help contribute to the prevention and resolution of conflict and the building of sustainable peace.

These guidelines reaffirm the importance of respect for international law in addressing self-determination conflicts as a foundation for long-term peace, stability, and security. Tensions and conflicts over issues of self-determination have historically arisen for a range of reasons, including the strategic and political considerations of powerful actors in the international system. What is common to all the situations addressed by these guidelines is a desire for greater self-governance that a relevant community feels has not been addressed by the state inside which it exists. Working toward the reduction of tensions over issues of self-determination in good faith and in line with international law—in particular, respect for human rights and the territorial integrity of states—is key to the prevention and resolution of conflict and to upholding peace and security in relevant situations.

13. A/RES/70/262, S/RES/2282 <https://digitallibrary.un.org/record/830222>. Other key documents highlight the importance of self-determination, notably the *African Charter on Human and Peoples' Rights* (Articles 19–20) <https://www.achpr.org/legalinstruments/detail?id=49>, the *Helsinki Final Act* (Principle VIII) <https://www.osce.org/helsinki-final-act>, and the *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations* (Resolution 26/25 (XXV)) <https://digitallibrary.un.org/record/202170>.

14. A/RES/70/262, S/RES/2282, PP8, PP10, OP3 <https://digitallibrary.un.org/record/830222>.

General Guidelines for Addressing Self-Determination Conflicts

Community or identity-based grievances relating to self-determination can be addressed at the outset through strong minority and Indigenous peoples' human rights protections. Measures that effectively uphold the human rights of minorities and Indigenous peoples can build trust between relevant communities and the state, and can address the forms of inequality, injustice and exclusion from power, opportunity, services, and security that can often lead to conflict,[15] including those relating to self-determination.[16] Emphasis should be given to measures that ensure the representation and effective participation of minority and Indigenous communities in relevant fora, as well as the influence of minority and Indigenous communities over decisions that affect them. This is in line with SDG 16.7, which aims to ensure responsive, inclusive, participatory, and representative decision-making at all levels.

Intercommunal dialogue in good faith and at an early stage is important to preventing and resolving self-determination conflicts, with the aim not only of addressing tensions where they occur, but also creating an environment conducive to sustainable peace that provides for the aspirations of relevant communities.[17] The active participation of local peace builders and civil society in intercommunal dialogue can be particularly fruitful in preventing and mitigating an initial growth in tensions.

When self-determination conflicts occur, processes to address them benefit from being as inclusive and representative as possible, given that they should not only be about ending and preventing conflict, but also about addressing the desire for greater self-governance by the relevant community in a sustainable manner. Sustainable peace is more likely to develop when relevant communities within a state participate in the creation and acceptance of new arrangements. A broad, representative process creates a greater peace constituency and encourages good governance in the longer term and, where applicable, prevents wartime leaders from entrenching their dominance in postconflict governance arrangements. The inclusion of civil society and local peace builders in mediation processes in particular can facilitate greater long-term support for arrangements. **In practice, processes to address self-determination conflicts should emphasize representation of every segment in society, notably women,**

15. See in particular United Nations; World Bank. 2018. *Pathways for Peace: Inclusive Approaches to Preventing Violent Conflict.* Washington, D.C.: World Bank <https://www.pathwaysforpeace.org>.

16. Ibid. 112, 129, 206–7 <https://www.pathwaysforpeace.org>.

17. See the UN's "sustaining peace resolutions" in this respect: A/RES/70/262, S/RES/2282 <https://digitallibrary.un.org/record/830222>. Other institutions, such as the OSCE High Commissioner on National Minorities, are also highly relevant.

youth, persons with disabilities, displaced people, and those belonging to other underrepresented groups. Conflict parties and mediators should seek to have diverse and representative negotiating teams directly engaging in processes to prevent and resolve self-determination conflicts.

Conflict mediation at an early stage, including at the local level where possible, can make arrangements more likely to succeed in the long term by building confidence between both sides, particularly when the relevant community has little trust in the central government. Independent external actors, including states, the UN, and other regional and subregional organizations, can also help to induce conflict resolution by encouraging parties to pursue a negotiated settlement.

Parties should seek to implement agreed arrangements to address issues of self-determination in good faith and without undue delay. Mechanisms built into arrangements should exist to address any ambiguity between interpretations of agreements in their implementation. **In addition, any changes to agreed arrangements to address self-determination conflicts should require a higher threshold for support than ordinary legislation,** and should in particular seek the free, prior, and informed consent of the relevant community, for example, through approval by a qualified majority of the legislature, autonomous bodies or bodies representing relevant communities, or both.[18]

States should acknowledge the historical context for the grievances of communities that relate to self-determination. Acknowledging the specific historic grievances of relevant communities can help in the formation of arrangements that will meet their needs, and in so doing, can address potential or ongoing self-determination conflicts.

Where relevant communities live across more than one state, each state is responsible for finding suitable arrangements for the populations living within their borders, and those who are citizens of that state. Assistance by external affected states should only take place with the consent of all states involved, as well as the relevant community.[19]

External affected states may extend benefits across borders, particularly on the basis of ethnic, cultural, linguistic, religious, or historical ties with communities living in other states; but they should only do so with full respect for the principle of territorial integrity, as well as the principle of noninterference in domestic affairs. Building ties between states can act as a

18. When relating to self-governance arrangements for minority communities, see OSCE *Lund Recommendations*, Recommendation 22 <https://www.osce.org/hcnm/lund-recommendations>.

19. See OSCE *Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations* <https://www.osce.org/hcnm/bolzano-bozen-recommendations>; *Council of Europe Framework Convention for the Protection of National Minorities*, Articles 17–18 <https://www.coe.int/en/web/minorities/text-of-the-convention>.

mechanism for conflict prevention. However, this should only occur when it does not have the intention or effect of undermining the principle of territorial integrity or of slowing the integration of communities into any state of which they are part. It is also important to consider the consent of the relevant community when building ties between states. Notwithstanding these constraints, communities should be able to maintain free and peaceful contacts with citizens of other states whom they are related to by national, ethnic, religious, or linguistic ties. States could also consider the creation of an informal consultation mechanism in which they are able to raise concerns regarding the welfare of related minorities, potentially under the supervision of a regional or international actor. When minority or Indigenous groups live across more than one state, states should be encouraged to cooperate and coordinate in their assistance to these communities.[20]

20. See OSCE *Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations* <https://www.osce.org/hcnm/bolzano-bozen-recommendations>*; Council of Europe Framework Convention for the Protection of National Minorities,* Articles 17–18 <https://www.coe.int/en/web/minorities/text-of-the-convention>; *UN Declaration on the Rights of Indigenous Peoples* (UNDRIP), Article 36 <https://digitallibrary.un.org/record/606782>.

Annex 1: Guidelines on Conflict Prevention

Full respect for the human rights of minority and Indigenous communities is key to the prevention of self-determination conflicts. Many self-determination conflicts emerge from violations of the human rights of Indigenous peoples and persons belonging to ethnic, religious, and linguistic minorities, most frequently relating to the legal system, language, and culture. To prevent self-determination conflicts, states should take proactive measures to uphold the human rights of minority and Indigenous groups within their borders. This may include finding adequate, agreed self-governance measures with such groups, as outlined in Annex 3. States should meet the needs of these groups with particular regard to their continued existence, their identity, nondiscrimination, and political and economic participation, and treating them in such a way as to uphold their equality and dignity. States should promote a system of equitable rights and representation, and provide a level playing field, including by ensuring equal access without discrimination to all branches of power, the equitable disbursement of social and other services, and equal opportunities. Citizenship for members of these communities should not be denied, and any barriers to it should be reduced. In addition, states should pay particular attention to agreements binding on them in which minority and Indigenous peoples' human rights have been codified.[21]

The specific rights of Indigenous peoples established in international law should be respected, in line with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). Of particular reference for these guidelines are Article 3, which affirms Indigenous peoples' right to self-determination, Article 4, regarding Indigenous peoples' expression of that right through "the right to autonomy or self-government in matters relating to their internal and local affairs," and Article 5, which asserts their "right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State." Indigenous languages should be protected, and attention should be paid to the preservation of the natural environment and natural resources in areas populated by Indigenous groups. In particular, states should consult Indigenous communities in accordance with their own decision-making procedures when planned development projects are likely to affect areas in which they live, and their

21. Inter alia, the *UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* <https://www.ohchr.org/en/professionalinterest/pages/minorities.aspx>; *UNDRIP* <https://digitallibrary.un.org/record/606782>; *ILO Indigenous and Tribal Peoples Convention, 1989* (No. 169) <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169>; *Council of Europe Framework Convention for the Protection of National Minorities* <https://www.coe.int/en/web/minorities/text-of-the-convention>.

free, prior, and informed consent should be sought in deciding whether a relevant development project should go ahead, as well as during its implementation if so. In accordance with Article 19 of UNDRIP, the free, prior, and informed consent of Indigenous peoples concerned through their representative institutions should also be obtained before the adoption and implementation of any legislative or administrative measures that may affect them takes place.[22]

Forms of early warning that protect minority and Indigenous peoples' human rights are of particular importance in preventing tensions that may develop into self-determination conflicts, including combating hate speech in the media and in education, and the provision of effective remedies, both legal and other, against discrimination. References to a country as based on specific constituent ethnic groups should be considered with care so as not to exclude minority or Indigenous communities, particularly if this is more than a nominal reference. States and regional organizations should continue to refine these early warning systems, including through collaboration with local peace builders and civil society, and should continue to seek better coordination with the UN on the issue of prevention, in line with the UN's Sustaining Peace resolutions[23] and Chapter VIII of the United Nations Charter.

Arrangements within states are likely to be more successful when they provide for the effective participation, as well as the representation in public affairs of minority and Indigenous communities. Effective participation implies influence over and presence in decision-making processes, both of which are important; participation mechanisms primarily help to address discrimination, whereas representation mechanisms are aimed at protecting and promoting the continued existence of community identity. Ways of giving effect to these priorities can include reserved seats for Indigenous peoples and minority groups in parliamentary committees or other forms of guaranteed participation in the legislative process, such as rights to block decisions on specific issues, as well as measures targeting the administration, including formal or informal understandings for the allocation of cabinet positions, and mechanisms to ensure consideration in particular ministries, such as consultative or advisory bodies or special measures for participation in the civil service. Effective participation and representation in the judiciary and security forces, including policing, as well as national human rights institutions, may also be of particular importance. Arrangements should include administrative measures, including in the formulation, adoption, implementation,

22. See *Free, Prior and Informed Consent: a Human Rights–Based Approach—Study of the Expert Mechanism on the Rights of Indigenous Peoples.* A/HRC/39/62 <https://digitallibrary.un.org/record/1642281>.

23. A/RES/70/262, S/RES/2282 <https://digitallibrary.un.org/record/830222>.

and monitoring of standards and policies affecting them.[24] **In general, and to the extent possible, relevant communities should be involved in the drafting, interpretation, implementation and evaluation of laws and policies affecting them.**[25] It may also be worth considering the effective participation and representation of relevant communities in semistate bodies, such as employers' unions, industry or trade unions, or chambers of commerce.

States may wish to set up advisory or consultative bodies within appropriate institutional frameworks that serve as permanent channels for dialogue between the executive branch and relevant communities, particularly when these groups are not represented in branches of government.[26] When seeking input from relevant communities, all actors should take steps to ensure that input is representative by including the perspectives of underrepresented or marginalized groups within that community. In particular, the perspectives of women and young people should be sought to prevent further marginalization.

The electoral system may be set up in such a way to facilitate the participation, representation, and influence of relevant communities; for example, reserved seats for minority groups in one or both chambers of parliament, changing boundaries to create minority-dominated electoral districts, allowing for minority-based political parties to seek office without discrimination, the absence of requirements for parties to be nationally oriented or have a national presence, high numbers of seats in each district, the absence of electoral thresholds, a large elected assembly, judicially reviewable electoral boundaries or proportional and preference forms of voting, including the ability to vote for more than one party, for example through dual or transferable vote. Where relevant communities are concentrated territorially, single-member districts may provide some representation. Electoral systems should also take account of displaced persons or refugees, as well as nomadic peoples, and external-voting provisions should

24. See the *Concluding Document of the Copenhagen Meeting of the Conference on the Human Dimension,* held in June 1990, para. 35 <https://www.osce.org/files/f/documents/9/c/14304.pdf>; *UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities,* Articles 2(2) and (3) <https://www.ohchr.org/en/professionalinterest/pages/minorities.aspx>; *Council of Europe Framework Convention for the Protection of National Minorities,* Article 15 <https://www.coe.int/en/web/minorities/text-of-the-convention>; OSCE *Lund Recommendations*, Recommendation 6. <https://www.osce.org/hcnm/lund-recommendations>. Sources of elaboration include OHCHR *Guidelines for States on the Effective Implementation of the Right to Participate in Public Affairs* <https://www.ohchr.org/EN/Issues/Pages/DraftGuidelinesRighttoParticipationPublicAffairs.aspx>, the OSCE *Lund Recommendations* <https://www.osce.org/hcnm/lund-recommendations> *and Warsaw Guidelines* <https://www.osce.org/hcnm/42055>, the Council of Europe's *Commentary on The Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs* <https://rm.coe.int/16806b6a0b>, and the Inter-Parliamentary Union's *Handbook for Parliamentarians Nº 23: Implementing the UN Declaration on the Rights of Indigenous Peoples* <http://archive.ipu.org/pdf/publications/indigenous-en.pdf>.

25. This is also in line with SDG 16.7, which aims to "ensure responsive, inclusive, participatory and representative decision-making at all levels." <https://indicators.report/targets/16-7>

26. For further details, see OSCE *Lund Recommendations*, Recommendations 12–13 <https://www.osce.org/hcnm/lund-recommendations>.

apply equally. Measures such as these are aimed at preventing the exclusion or invisibility of minority and Indigenous communities that can occur in political systems controlled by a majority group.[27]

The state legal system is vital to underpinning the rights of persons belonging to minority and Indigenous communities and should ensure that they enjoy effective equality. The system should uphold antidiscrimination measures in particular, and should seek to promote substantive (as opposed to formal) equality. It should also permit forms of positive measures where necessary, for example to facilitate self-governance arrangements with regard to the legal system in relevant regions. A justice system that upholds the rights of minority and Indigenous communities is particularly important given that they may often lack power in public life. States should pay attention to discrimination based on language in the administration of justice, notably in the criminal justice system. Where separate indigenous justice systems exist, they should be recognized as such and seen as complementary to state justice systems.[28]

The state education system should ensure that all children can be educated in their community's language, religion, and culture, while also fostering social cohesion and knowledge between communities within a state, including a shared history curriculum and knowledge of state (official) languages. States should ensure that individual members of minority and Indigenous communities in particular can be educated in their own language if this is applicable, while also enabling them to be proficient in state languages, so that they can participate fully in society.[29] This is in line with SDG 4.7, which stresses the promotion of a culture of peace and nonviolence, global citizenship, and appreciation of cultural diversity in education.[30]

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27. See OSCE *Lund Recommendations*, Recommendations 7–10, <https://www.osce.org/hcnm/lund-recommendations> as well as OSCE *Warsaw Guidelines* <https://www.osce.org/hcnm/42055>.

28. Under Articles 4, 5, and 34 of *UNDRIP* <https://digitallibrary.un.org/record/606782>, Indigenous peoples have specific rights to promote, develop, and maintain their own juridical systems or customs in accordance with international human rights standards. For further information on how this paragraph relates to the rights of Indigenous peoples, see A/HRC/24/50, *Access to Justice in the Promotion and Protection of the Rights of Indigenous Peoples—Study of the Expert Mechanism on the Rights of Indigenous Peoples (2013)* <https://digitallibrary.un.org/record/763035>; A/HRC/27/65, *Access to Justice in the Promotion and Protection of the Rights of Indigenous Peoples: Restorative Justice, Indigenous Juridical Systems and Access to Justice for Indigenous Women, Children and Youth, and Persons with Disabilities—Study of the Expert Mechanism on the Rights of Indigenous Peoples (2014)* <https://digitallibrary.un.org/record/778006>; and A/HRC/42/37, *Report of the Special Rapporteur on the Rights of Indigenous Peoples—Access to Justice in Ordinary and Indigenous Justice Systems (2019)* <https://digitallibrary.un.org/record/3862511>.

29. See *Council of Europe Framework Convention for the Protection of National Minorities*, Article 14 <https://www.coe.int/en/web/minorities/text-of-the-convention>.

30. See also *Council of Europe Framework Convention for the Protection of National Minorities,* Articles 6(1), 12, and 13 <https://www.coe.int/en/web/minorities/text-of-the-convention>; *European Charter for Regional or Minority Languages,* Article 7(3) <https://www.coe.int/en/web/european-charter-regional-or-minority-languages/text-of-the-charter>; *UN Convention on the Rights of the Child,* Article 30 <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>.

States may consider the role of the media in facilitating the inclusion of relevant communities.[31] The media have an important role in ensuring that those belonging to minority or Indigenous communities are seen in public life as a valuable part of the identity of the state rather than as a potential threat, in helping to counter stereotypes and in combating hate speech. The media also can provide opportunities to receive and impart information in minority or indigenous languages. Print media in particular may have additional symbolic value as evidence of the existence of community languages within the public sphere. States should address the inclusion and effective participation of individuals from relevant communities in publicly owned media organizations, including in relevant decision-making processes and media supervisory bodies. Where states support private media activities, this should include support, in a nondiscriminatory way, for private media owned by or targeted at minority and Indigenous groups, including appropriate financial support where possible.

States and communities should cultivate an inclusive conversation on issues of historical memory and the interpretation of history in education, the legal sphere, and the public space. It is important to acknowledge the existence of multiple historical perspectives and interpretations as part of a long-term process of seeking the truth of past events and promoting reconciliation.[32] Creating an inclusive environment on issues of historical memory that acknowledge varying interpretations of history in an appropriate way can be difficult, particularly when there is a history of violence, either between communities or between a community and a state, but it is an important process for successfully addressing past conflicts and preventing future ones. Practical measures to prevent conflict can include the use of symbols that promote solidarity, including statues, street names, and monuments in the public space. Where appropriate, opportunities to promote inclusive symbols should be sought, and memory laws that prohibit alternative historical interpretations avoided. As a longer-term measure, states may consider creating mechanisms or institutions that can specifically address issues of historical memory.[33]

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31. See inter alia OSCE *Tallinn Guidelines on National Minorities and the Media in the Digital Age* <https://www.osce.org/hcnm/tallinn-guidelines>*; Council of Europe Framework Convention for the Protection of National Minorities,* Articles 6(1) and 9 <https://www.coe.int/en/web/minorities/text-of-the-convention>.

32. On the implementation of the framework for recognition, reparation, and reconciliation contained in UNDRIP, see A/HRC/EMRIP/2019/3/Rev.1, *Efforts to Implement the United Nations Declaration on the Rights of Indigenous Peoples: Recognition, Reparation and Reconciliation*, in particular section IV <https://digitallibrary.un.org/record/3876759>.

33. See also the work of the OSCE High Commissioner on National Minorities on this issue, notably in *HCNM at 25: Personal Reflections of the High Commissioners, 2018,* 42 <https://www.osce.org/hcnm/402845> and OSCE *High Commissioner on National Minorities, Address by Lamberto Zannier, OSCE High Commissioner on National Minorities, to the Meeting on "Contested Historical Legacies in Public Spaces."* All Souls College, Oxford University, 25 March 2019 <https://www.osce.org/hcnm/415121>.

The effective socioeconomic participation and inclusion of relevant communities should be addressed at the earliest possible stage, in line with SDG 10.[34] Ensuring the economic inclusion of minority and Indigenous communities in particular is a key element in preventing the identity and community-based grievances that can lead to self-determination conflicts. Such grievances may emanate from regulations and requirements that impede or exclude minority or Indigenous communities from socioeconomic participation, including in employment, which can in some cases be considered to be discriminatory and can lead to inequality and exclusion. Reliable and easily accessible data disaggregated by community is essential to developing effective measures to address socioeconomic participation, in line with SDG 17.[35] Addressing socioeconomic participation is particularly important in situations where minorities or Indigenous peoples are geographically concentrated in border areas or in regions at a distance from political and economic centers of activity. Efforts taken to address socioeconomic factors may also intersect with the self-governance arrangements discussed in Annex 3. Projects fostering intercommunal relations or public information programs may help to ensure that measures taken to assist relevant communities do not create tensions with other groups in society.

States should take care to uphold the land rights of minority and Indigenous communities. States should legally recognize these rights and uphold them, whether they are based in traditional ownership—particularly precolonial land holdings—or registered title. The effective participation of relevant communities in addressing land issues may be particularly important, including through self-governance mechanisms where these apply, such as those discussed in Annex 3. Land issues can be a flashpoint for conflict for economic and identity reasons, including the enhanced relationship between Indigenous peoples and their historic territories, the existence of sacred territories, the potential to undermine socioeconomic participation, or histories of the ethnic cleansing of minority groups and Indigenous peoples within states.[36] Similarly, **states must not exploit the natural resources of minority and/or Indigenous communities without their free, prior, and informed consent;** otherwise, this may threaten their livelihood or means for economic self-sufficiency or erode their culture and tradition. If there

34. See also *Council of Europe Framework Convention for the Protection of National Minorities*, Article 15 <https://www.coe.int/en/web/minorities/text-of-the-convention>.

35. See in particular SDG target 17.18 to "increase significantly the availability of high-quality, timely and reliable data disaggregated by income, gender, age, race, ethnicity, migratory status, disability, geographic location and other characteristics relevant in national contexts," <https://indicators.report/targets/17-18>, A/RES/70/1 para. 74(g) <https://digitallibrary.un.org/record/803352>, and OHCHR, *A Human Rights–Based Approach to Data*. <https://www.ohchr.org/EN/Issues/Indicators/Pages/documents.aspx>.

36. *The Secretary-General's Guidance Note on Land and Conflict* may serve as a useful reference point on this issue, particularly section A.5 (Support Human Rights-Based and Gender-Sensitive Approaches) <https://unhabitat.org/sites/default/files/documents/2019-05/sg-guidance-note-on-land-and-conflict-march-2019-1.pdf>. When engaging with Indigenous peoples, ILO C169—*Indigenous and Tribal Peoples Convention, 1989* (No. 169) <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169>, and *UNDRIP* <https://digitallibrary.un.org/record/606782> are of particular importance.

is a common decision to pursue development projects, adequate compensation should be provided.

Sustainable development should be understood as a form of long-term conflict prevention. This is underlined in the UN General Assembly and Security Council's sustaining peace resolutions, which note that "development, peace and security, and human rights are interlinked and mutually reinforcing",[37] and is in line with SDG 16. States may wish to consider how targeted, timely, and appropriate development assistance, particularly for economically marginalized communities, can help to prevent self-determination conflicts in the long term.

Development assistance should be carried out in a nondiscriminatory way that is sensitive to the impact of this assistance on intercommunity relations. This can be done through creating development policies and programs that incorporate the views of persons belonging to relevant communities and can be monitored on the basis of data disaggregated by community, in line with SDG 17.[38] If a development project is deemed necessary, relevant communities should be adequately compensated, and customary rights should be recognized, including communal tenure for pastoralists.

Arrangements should avoid creating explicit or implicit incentives for the increased population transfer of majority or minority groups. In particular, states should not promote the transfer of members of a majority ethnic group into minority-majority areas, and should seek to avoid creating arrangements that may incentivize this. Intentional policies of population transfer, which are contrary to human rights, drive narratives of assimilation and colonialization of minority communities and therefore contribute to tension. At the same time, minority communities should respect the rights of people from majority ethnic groups to freely choose to live in minority-majority areas.

Steps taken to address the marginalization of minority and Indigenous women are of particular importance, given that they may face additional structural barriers to education and employment or may be marginalized through patriarchal property rights laws or land tenure rules. In general, measures should consider intersectional factors, as minority or Indigenous women and sexual minorities may experience compounded marginalization. Actions to support gender equality help to support the implementation of SDG 5.

37. A/RES/70/262, S/RES/2282, PP4. See also OP16 <https://digitallibrary.un.org/record/830222>.

38. See in particular SDG target 17.18 to "increase significantly the availability of high-quality, timely and reliable data disaggregated by income, gender, age, race, ethnicity, migratory status, disability, geographic location and other characteristics relevant in national contexts" <https://indicators.report/targets/17-18>, A/RES/70/1 para. 74(g) <https://digitallibrary.un.org/record/803352>, and OHCHR, *A Human Rights–Based Approach to Data*. <https://www.ohchr.org/EN/Issues/Indicators/Pages/documents.aspx>.

Individuals must be able to self-identify as belonging to a particular community or not. While in some cases the decision of an individual to identify with a community may be straightforward, it is not always the case. Individuals may identify with a group on the basis of ethnicity, language, or culture, neither, or more than one. What may look to outside observers like a group with a common identity may instead be made up of many different forms of overlapping and shared identities. Relevant communities may contain internal divisions due to age, gender or other status, such as displaced people. Efforts to prevent and resolve self-determination conflicts should guarantee the right for individuals to self-identify as a member of a majority or minority group, with no disadvantage arising from that choice or refusal to choose, as noted in the OSCE's *Lund Recommendations*.[39] This is one reason that it is key to consult a variety of stakeholders within a community seeking a greater degree of self-governance. When an individual asserts membership of a community or state, the burden of proof should be on the community or state to prove that the individual is not part of that community, if it chooses to do so.[40]

39. OSCE *Lund Recommendations*, Recommendation 4. <https://www.osce.org/hcnm/lund-recommendations>

40. For further reference regarding this paragraph, see the *Concluding Document of the Copenhagen Meeting of the Conference on the Human Dimension held in June 1990*, para. 32 <https://www.osce.org/files/f/documents/9/c/14304.pdf>; *UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities,* Article 3(2) <https://www.ohchr.org/en/professionalinterest/pages/minorities.aspx>; *Council of Europe Framework Convention for the Protection of National Minorities*, Article 3(1) <https://www.coe.int/en/web/minorities/text-of-the-convention>. The right of self-identification is an important constituent element of the right to self-determination of Indigenous peoples. See in particular *UNDRIP* Articles 9 and 33 <https://digitallibrary.un.org/record/606782>.

Annex 2: Guidelines on Conflict Resolution

Process

It is important for all parties to seek to avoid setting preconditions or putting up barriers to participation in conflict resolution processes[41] **and to recognize the need for flexibility in negotiations, with the overall aim of building trust in the process as well as in the durability of its outcomes**.

Conflict resolution processes should promote the participation of civil society and local peace builders, including in the implementation of agreed arrangements, and particularly in the context of arrangements to address self-determination conflicts that prioritize elite power sharing. Specific opportunities should be created for civil society representatives and local peace builders to engage on the substance and procedure of negotiations. Inclusivity in this way can help facilitate greater long-term support for arrangements at local levels and help create opportunities to address local grievances that could spark future self-determination conflicts.

The direct inclusion of marginalized and underrepresented groups in relevant processes can help to foster the sustainable resolution of self-determination conflicts. Sustainable peace is most achievable when there is an inclusive process that incorporates voices from all parts of society, in particular those that have been historically marginalized or underrepresented within the relevant community. Historically marginalized and underrepresented groups may include women, young people, people with disabilities, or people who have been displaced, among others. Persons belonging to such groups should also be included in any constitution-building process. A broad process improves the chances that arrangements resulting from it will be fair and equitable, addressing the priorities of society as a whole where these differ from those of wartime leaders. This will in turn make it more difficult for opponents of such arrangements to cast doubt on their legitimacy. **Different modes for public participation may also be considered**, in particular those that allow for constructive and inclusive public discussion, such as citizens' assemblies and public meetings. All groups should be given the necessary resources to enable them to participate fully.

Processes should include measures to mitigate the extent to which they assign privileged positions to leaders of groups who have used violence. A process that assigns privileged positions solely to those who have used violence is

41. In situations involving Indigenous peoples, note *UNDRIP* Article 40: "Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights." <https://digitallibrary.un.org/record/606782>.

likely to create a narrower settlement that could further marginalize communities who have not taken up arms by excluding them from discussions, in so doing disincentivizing nonviolent approaches to addressing issues relating to self-determination. Furthermore, privileging those who have used armed force is likely to perpetuate gender inequalities, as leaders of armed groups are overwhelmingly male. Mediators and others facilitating relevant processes may seek to prioritize the inclusion of those who represent relevant communities, where possible on the basis of a freely given electoral mandate, and with specific attention paid to those who have not used or promoted the use of violence during the conflict.

The division of a process into distinct "conflict termination" and "constitution-making" phases, to the extent that it is possible, may be one way to sustainably address the issues that have given rise to a self-determination conflict in an inclusive way. Such a division may create opportunities for broader participation in the latter phase, which will be aimed at creating a sustainable settlement that provides for the desires and aspirations of all sectors of society, in particular the relevant community. One way to encourage the division of the process into phases could be through the framing of arrangements made in the conflict termination phase as a transitional plan, which would automatically phase out without explicit action to maintain them.

These guidelines acknowledge the difficulty of ensuring a sufficiently broad process, particularly when talks are primarily aimed at terminating violent conflict, and addressing the sensitive issues of dignity and identity that are often central to self-determination conflicts. The need to ensure confidentiality is also noted. Nevertheless, these factors are acknowledged in the context of the overall imperative to ensure that processes lead to arrangements that are as sustainable as possible. **Where the process of arriving at a settlement has not been broad, greater efforts should be made to ensure the free, prior, and informed consent of those immediately affected, particularly with respect to members of the relevant community.**

There should be a clear mechanism for addressing differences in the interpretation of agreed arrangements. Clarity in arrangements is particularly important over the assignment of competences, in the creation of dispute resolution mechanisms, and on the core governance issues of autonomy, power sharing, security, and human rights. In addressing issues of interpretation, parties may wish to consider using alternative dispute resolution mechanisms, particularly in cases in which trust in existing mechanisms has been damaged by the conflict.

Any deferral of the implementation of autonomy, power sharing, security, or human rights mechanisms in particular should be avoided if at all possible. If they are deferred, arrangements should create a clear time frame for the issue to be addressed, and an independent mechanism to do so.

Changes to agreed arrangements to address self-determination conflicts should require a higher threshold than ordinary legislation. This may be made possible by adopting the arrangement as a constitutional provision, or in states where the constitution provides for it, as an organic or other form of special law, or by requiring a qualified majority of the legislature for changes to be made. In addition, the central state should only be able to revise or revoke arrangements with the free, prior, and informed consent of the relevant community. Specific means for regular cross-community review could be included in arrangements, as a mechanism that would allow for changes to occur on an agreed basis.[42]

When there is a lengthy period without an agreement to resolve the conflict, steps may be required to ensure that rights are maintained for affected populations and that international cooperation is effective. Situations like these, often known as "frozen conflicts," may lead to a situation in which the community may not be functionally incorporated into the state, but is still represented internationally by state institutions. Authorities may need to take steps to ensure that the rights of those living in relevant communities are not adversely affected by this situation. In addition, intergovernmental bodies may need to directly address representatives of these communities when this is required for international cooperation, such as on preventing corruption that passes through areas regulated by a self-governing community outside of the state's control.

Substance

Arrangements should look to create a foundation for a healing of divisions between identities, particularly where hatred or fear of another group has become part of a communal identity, as is the case in many self-determination conflicts. Where arrangements create administrative divisions between populations on the sole basis of ethnicity, such as in consociational forms of power sharing, these arrangements should be subject to regular review, for example through review clauses that can phase out power-sharing provisions at an appropriate time given public will.[43]

Principles of human rights, good governance, and democratic accountability merit strong consideration amongst arrangements to resolve self-determination conflicts, in particular when arrangements result in the relevant community exercising a high or increased degree of self-governance. The implementation of arrangements should be specifically monitored in light of these principles, and arrangements should consider the extent to which capacity building

42. See OSCE *Lund Recommendations*, Recommendation 22 <https://www.osce.org/hcnm/lund-recommendations>.

43. See OSCE *Lund Recommendations*, 22–23 <https://www.osce.org/hcnm/lund-recommendations>.

is needed to fulfill them. The facilitation of institutions that can maintain the link of accountability between self-governing authorities and the relevant community is vital to sustainable outcomes in cases of increased self-governance. When arrangements do not result in increased self-governance, human rights—in particular the minority and indigenous human rights protections outlined above—good governance, and democratic accountability remain key to the prevention of further self-determination conflicts.[44]

Arrangements should recognize the need to ensure accountability for the most serious international crimes, in particular war crimes, crimes against humanity, and genocide, with a focus on those considered the most responsible for such crimes. Mechanisms may be considered to ensure that perpetrators are not retained in any postconflict judicial system. This is most relevant and important where there have been mass atrocities. The short-term need to solidify peace may be critical, but any impunity for main perpetrators of the most serious crimes, such as through a blanket amnesty, could increase tensions and foster conflict in the long run, as well as being in violation of customary international law. In addition, measures to investigate and acknowledge the root causes of conflict can be very helpful.

Nonjudicial transitional justice mechanisms might be used in parallel, with the overall aims of ensuring reconciliation and fostering a sustainable peace.[45] These mechanisms will also assist in realizing SDG 16.[46]

Arrangements should allow displaced persons to be able to make voluntary and informed choices regarding return. The rights of internally displaced persons to choose between return to their homes, local integration at the site of displacement, or resettlement to another part of the state should be respected. Return policies should be well defined, and states should enable conditions that make all three viable options, including for minority and Indigenous communities. States should also provide displaced persons with accurate information so that they can make an informed decision about whether and how to return. Arrangements should not render anyone stateless. **Arrangements should allow for displaced persons to return at the earliest practicable date if that is their choice**, including through setting up fully funded restitution systems that identify owners of property and

44. In line with SDG 16.6, to "develop effective, accountable and transparent institutions at all levels." <https://indicators.report/targets/16-6/>.

45. With respect to the rights of Indigenous peoples, see A/HRC/EMRIP/2019/3/Rev.1, *Efforts to Implement the United Nations Declaration on the Rights of Indigenous Peoples: Recognition, Reparation and Reconciliation*, in particular section IV <https://digitallibrary.un.org/record/3876759>, and A/HRC/24/50, *Access to Justice in the Promotion and Protection of the Rights of Indigenous Peoples—Study of the Expert Mechanism on the Rights of Indigenous Peoples*, 2013, in particular section VIII and the recommendations contained in its Annex,"Expert Mechanism advice N°. 5, 2013: Access to Justice in the Promotion and Protection of the Rights of Indigenous Peoples." <https://digitallibrary.un.org/record/763035>.

46. Notably SDG 16.3, to "Promote the rule of law at the national and international levels and ensure equal access to justice for all." <https://indicators.report/targets/16-3>.

return it to them, timely reconstruction of the former conflict area, and demining activities. Restitution systems should allow for the participation of displaced persons, and displaced persons should be kept fully informed of these systems and have full access to judicial remedies.

Where relevant communities or their members have lost access to historic or traditional lands or property during the conflict, harm should be redressed at the earliest possible juncture. Economic harm should be redressed through adequate compensation. Issues of identity, such as free access to sacred spaces, may also need to be addressed. Arrangements should recognize the rights of those who previously occupied land and were unfairly evicted, including those whose claims are based on traditional ownership, as well as registered title.

When arrangements provide for disarmament, demobilization, and reintegration (DDR), this should specifically take place in close consultation with relevant communities. The proliferation of small arms and light weapons during conflict, or the perception that armed forces have been drawn along ethnic lines, may stoke fears of insecurity amongst a minority or Indigenous community. DDR processes, where they are possible, should therefore be carried out carefully, avoiding coercion, and by consulting relevant communities in as open a manner as possible, including with regard to future policing and security arrangements. States should consider the gender aspect of DDR processes, and empower women to participate in the design and implementation of DDR efforts, in line with SDG 5. Human rights, including those applicable to minorities and Indigenous peoples, should be included in training for postconflict police forces. The effective participation of the members of relevant communities in postconflict police and security forces should also be carefully considered.

There should be independent oversight, agreed by the parties, of the implementation period for any new arrangements, without prejudice to the need for local ownership, in order to ensure that all relevant actors are held accountable to their commitments, and making it more difficult for those opposed to the arrangements to disrupt or frustrate implementation. The precise form that this oversight takes should be agreed by the parties. Maintaining independent oversight over the implementation period is particularly important where there has previously been violent conflict, as parties, particularly those that are militarily dominant, may assume that international attention will decrease and that subsequently, they may face fewer consequences for rearming or consolidating a perceived military advantage. International oversight of the implementation period may be considered; in particular, regional actors may be well placed to oversee the implementation of arrangements. Whether or not international involvement is present, the need for independent oversight of the implementation of any arrangements remains, and efforts should be taken to internalize such functions within the state and/or any self-governing regions as appropriate.

There should be an implementation plan for any new arrangements, providing for clarity on how revenue will be raised. Any implementation plan should include sufficient preparation, resources, including the provision and training of human resources, and mechanisms for monitoring and support, including for capacity building where necessary. Where competencies have been formally transferred to the relevant community, how these arrangements will be funded and resourced should be addressed in advance.

Annex 3: Guidelines on Self-Governance Arrangements

In helping to resolve ongoing and to prevent future self-determination conflicts, states may consider how arrangements for self-governance could be introduced or extended. Such arrangements aim to improve the opportunities of relevant communities to exercise authority and influence over matters affecting them, and are in line with the principle of subsidiarity. Self-governance arrangements may be easier to implement in states where federal, regional, or devolved forms of government already exist, but can also be useful for others; in states where there has previously been a greater degree of centralization, a phased introduction of self-governance measures may be useful to build local capacity. Functions may also be allocated asymmetrically to respond to different situations within the same state.[47] Where self-governance arrangements exist, corresponding constitutional and/or legislative provisions should clearly specify their nature and scope, the division of competences, the relations between relevant bodies, and their funding. Periodic reviews of self-governance arrangements may also be useful to determine whether amendments to such arrangements are necessary.[48] With respect to Indigenous peoples, Article 4 of UNDRIP specifically states that autonomy and self-government constitute means of exercising their right to self-determination. States should recognize this legal right and facilitate its practical application in relevant cases, including through adequate funding and support to Indigenous peoples' proposals on how this right may be realized.[49]

Self-governance arrangements agreed between states and relevant communities can be of either a territorial or nonterritorial character. Functions generally exercised by the central government under such arrangements include defense, foreign affairs, immigration and customs, macroeconomic policy, and monetary affairs,[50] whereas those that are more likely to be shared between self-governing administrations and the central government include taxation and the administration of justice, including policing, tourism, and transport.[51] Other functions may be managed by self-governing administrations or shared with the central government on a territorial or nonterritorial basis.

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47. See OSCE *Lund Recommendations*, Recommendation 15 <https://www.osce.org/hcnm/lund-recommendations>.

48. See OSCE *Lund Recommendations*, Recommendation 22 <https://www.osce.org/hcnm/lund-recommendations>.

49. For more detail on the exercise of autonomy and self-government by Indigenous peoples, see A/74/149, *Report of the Special Rapporteur on the Rights of Indigenous Peoples—The Right of Indigenous Peoples' to Autonomy or Self-Government,* 2019 <https://digitallibrary.un.org/record/3814568>; building on an introductory comment in A/73/176, Section III <https://digitallibrary.un.org/record/1638579>.

50. See OSCE *Lund Recommendations*, Recommendation 15 <https://www.osce.org/hcnm/lund-recommendations>.

51. See OSCE *Lund Recommendations*, Recommendation 20 <https://www.osce.org/hcnm/lund-recommendations>.

Functions over which self-governing administrations have successfully assumed primary or significant authority include education, culture, use of minority and indigenous languages, religious issues, environment, local planning, management of natural resources, economic development, local policing, and housing, health, and other social services.[52] Of these, education, language, culture, and religious issues are those more commonly addressed under nonterritorial self-governance provisions.[53] Forms of nonterritorial self-governance may apply to collectivities of citizens based on a particular shared identity and apply to particular functions for a defined group not based on their territorial configuration, including through the creation of private or public institutions. Nonterritorial self-governance arrangements in particular allow for the expression of the specific identities of relevant communities by ensuring that the rights associated with the expression of an identity can be exercised in respect of this identity.

Principles of human rights, good governance, and democratic accountability are key to sustainable peace in self-governing regions to strengthen the fundamental link of democratic accountability between self-governing authorities and the relevant population.[54] Capacity building for self-governing institutions should be encouraged where necessary to better uphold these principles. **In particular, self-governing authorities should meet at least the same human rights standards as the state in the exercise of their functions.**[55] National and international human rights bodies, civil society, and substate human rights bodies within self-governing populations, as applicable, should be encouraged to monitor human rights standards within the self-governing community. This being said, self-governance arrangements do not diminish the state's ultimate responsibility for human rights in international law.

Specific attention should be paid to the human rights of persons belonging to minorities in self-governing regions.[56] This includes those that are part of the majority in the state as a whole. Self-governing institutions should respect the human rights of those "minorities within minorities" that are part of the national majority, and should pay particular attention to this issue in postconflict settings, where tensions between minority and majority communities may remain a flashpoint for conflict.

A dispute resolution mechanism should exist to address questions of legal authority and conflicts over the exercise of that authority between the

52. Ibid.

53. See OSCE *Lund Recommendations*, Recommendation 18 <https://www.osce.org/hcnm/lund-recommendations>.

54. See OSCE *Lund Recommendations*, Recommendation 16 <https://www.osce.org/hcnm/lund-recommendations>.

55. See OSCE *Lund Recommendations*, Recommendation 21 <https://www.osce.org/hcnm/lund-recommendations>.

56. Ibid.

relevant community and central government. In some cases, particularly those where there has previously been violent or armed conflict, direct review by the central government will be unpalatable to the self-governing community. Possibilities for dispute resolution can include judicial review, provided that the judiciary is effectively independent, accessible, and impartial. Alternative forms of dispute resolution, such as negotiation, fact-finding, mediation, and arbitration, an ombudsman for national minorities, and special commissions should also be considered.[57]

Ideally, cooperative arrangements between relevant levels of government could be created to avoid gaps or duplication and to encourage common standards where appropriate. These could include obligations to consult, the division of service provision and administration, and arrangements for community representatives to act as agents or delegates of the state in international fora.

The supranational dimension of self-governance arrangements should be considered. International or intergovernmental mechanisms can play a role in building confidence between relevant communities and the central government to pursue self-governance, particularly if the state is incorporated into processes of supranational integration. Where self-governance arrangements are broad, particularly on issues in which competencies are devolved and policies diverge, states may consider modalities that would allow for the self-representation of self-governing communities in international fora to ensure their effective participation and representation, without prejudice to state sovereignty. Supranational organizations should also take the issue of the effective participation and representation of self-governing communities into consideration where states decline to or are unable to assist. Where appropriate, advisory bodies at the supranational level may also directly address self-governing communities.

57. See OSCE *Lund Recommendations*, Recommendation 24 <https://www.osce.org/hcnm/lund-recommendations>.

Case Studies

Aceh Case Study

Chris Chaplin

On 26 December 2004, a devastating tsunami caused by a massive earthquake hit coastlines across the Indian Ocean. While waves reached as far as the eastern coast of Africa, it was the Indonesian province of Aceh, located approximately 240 kilometers from the earthquake's epicenter, which was most badly hit. Although no one has been able to count the death toll accurately, an estimated 160,000 Acehnese lost their lives that day.[58] Exacerbating this tragedy was the fact that Aceh was also home to a protracted separatist conflict that has lasted almost thirty years. The ethnonationalist Free Aceh Movement (*Gerakan Aceh Merdeka* (GAM), created by Hasan di Tiro in 1976, was fighting a drawn-out guerrilla war against the Indonesian state when the tsunami hit. An estimated 15,000 individuals had been killed during to the conflict, with numerous atrocities having been inflicted on the local population.[59]

As devastating as the tsunami was, it has been credited for catalyzing a resolution to what had previously been seen as a largely intractable conflict. In the tsunami's aftermath, both GAM and the Indonesian military announced they would cease hostilities to allow for much needed humanitarian aid. With this support came international media and political attention, and an impetus to find a settlement to the conflict. Under international mediation, the two sides managed to agree a political solution, and signed a Memorandum of Understanding (MoU), in Helsinki, Finland, in August 2005. The agreement set out the terms under which GAM would give up its demands for independence and disarm in return for greater political representation in Aceh. In practice this meant that Acehnese political parties would contest provincial elections, and that the Acehnese government was to exercise authority within all sectors of public affairs except on issues of foreign affairs, defense, security, judicial, and monetary matters. Provisions of the agreement also stipulated that an investigation into human rights abuses connected to the conflict would be carried out, and Indonesia would withdraw nonorganized military forces. The peace settlement was far from perfect in either its content or implementation.

58. Reid, Anthony. 2006. Ed., *Verandah of Violence: The Background to the Aceh Problem.* Singapore: NUS Press.1 <https://nuspress.nus.edu.sg/products/verandah-of-violence>.

59. Barron, Patrick, Samuel Clark, and Muslahuddin Daud. 2005. *Conflict and Recovery in Aceh: An Assessment of Conflict Dynamics and Options for Supporting the Peace Process*. Washington, D.C.: World Bank Group <https://openknowledge.worldbank.org/handle/10986/11220>.

For one, civil society activists were generally excluded from the peace process, and so important issues, such as addressing gender-based violence, for instance, were neglected from the peace agreement.[60] Moreover, the Law on Governing Aceh (LoGA), passed in 2006, as the legal regulation to implement the peace agreement, was watered down by Indonesian parliamentarians. Key aspects of the agreement, including the establishment of a human rights commission, were long delayed. Yet for all its faults, the agreement has led to a lasting peace settlement respected by all sides. Crucial to its success has been the ability of GAM's elite to successfully integrate into the political and economic fabric of the province (both through legal and illegal means), as well as greater autonomy for Acehnese cultural and religious institutions in everyday life.

The lasting peace is also due to deeper international and domestic transformations that had occurred over the decade and a half preceding the agreement. Without the resignation of either Indonesian President Suharto in 1998 or the growing global emphasis on human rights and conflict resolution after the Cold War, it is doubtful that Indonesian and Acehnese parties would have found common cause. The language of democracy, local rule, and human rights had gained ground in Indonesia during the country's transition to democratic governance, and these demands resonated amongst Acehnese civil society activists and ultimately, GAM. By adopting the language of self-government and democratic accountability, GAM and Acehnese civil society fundamentally shifted the conflict narrative from one cloaked in ethnonationalist exceptionalism, to one defined as a civic struggle for local rights. In doing so, the space to find a mediated settlement that focused on aspects of governance rather than independence opened up to all parties.

The Roots of the Conflict

To understand the peace, we must briefly look to the historical roots of the conflict. Aceh has a long and proud history independent from that of the rest of Indonesia, as the Sultanate of Aceh had been an important trading post and regional naval power. During the 1600s, it played a pivotal role in the maritime spice trade and had established relations with British, French, and Ottoman representatives. It envisioned itself as one of the eastern most points of Islamic influence and was commonly referred to as the Verandah of Mecca (*Serambi Mecca*), a name still colloquially used to this day. Until the end of the 19th century, Aceh maintained both its autonomy and focus on maritime trade. But after the Dutch invaded the territory in 1873, the region experienced a bloody war of resistance that was only quelled in 1912, when Aceh was assimilated into the larger colony of the Dutch East Indies. Since then, Acehnese history has been one of almost continuous conflict, first against the Dutch and then against the Indonesian state.

60. Kamaruzzaman, Suraiya. 2008. "Agents for Change: The Roles of Women in Aceh's Peace Process." In Aguswandi and Judith Large, eds., *Reconfiguring Politics: the Indonesia-Aceh Peace Process,* Conciliation Resources. *Accord* 20, September <https://www.c-r.org/accord/aceh-indonesia/agents-change-roles-women-acehs-peace-process>.

Aceh's anticolonial war against the Dutch provided an important foundational aspect in the nationalist demands of GAM's leaders. When di Tiro founded GAM in 1976, he demanded independence from Indonesia on grounds that the Acehnese had a unique identity—although this message didn't initially resonate widely amongst the population. From 1976 to 1979, GAM had approximately 200 members, and was quickly suppressed by the Indonesian military. Di Tiro and GAM's leadership were also forced into exile in Sweden. But GAM wasn't finished, as it was able to gain support for its cause from Libya and launch a second campaign in 1989.[61] This second campaign was bigger than the first, with approximately 1,000 individuals taking part. Moreover, whereas in 1976 GAM remained fairly isolated from the population, by the late 1980s its message of independence resonated due to mounting grievances amongst Acehnese towards the Indonesian government. The lack of royalties from the natural gas plant located in Lhokseumawe and operated by Mobil Oil, and fears that the inward migration of Javanese to Aceh were undermining Acehnese interests, fed support for GAM's message, especially amongst ethnic Acehnese rural-farming communities.

To counter the threat posed by GAM, the Indonesian government launched military operations across the province from 1989 to 1998 and declared Aceh an area of military operation (*Daerah Operasi Militer)*. While largely successful in diminishing GAM's capability, the military campaign led to numerous casualties and human rights abuses, further fueling grievances towards the central government. According to the International Crisis Group, between 1,000 and 3,000 people were killed during this period, although estimates by Acehnese NGOs are much higher.[62] When President Suharto's authoritarian regime fell in 1998, the scale of the abuses committed during the conflict came to light. A budding Acehnese civil society uncovered mass graves, recorded the testimony of survivors, and documented the military units responsible.

Democracy and the Demand for a Referendum

Suharto's resignation ultimately provided the political space through which Acehnese and Indonesian authorities could eventually make peace. As news of human rights abuses spread across Aceh, widespread antigovernment mobilization gathered pace. Civil society leaders, who had previously played little part in the conflict, began to demand greater democratic freedoms, accountability, and ultimately a referendum on Acehnese self-governance. Accordingly, Indonesia's transition into a democratic state fundamentally transformed the Aceh conflict in ways that would later facilitate the lasting peace agreement, as it created an

61. Ross, M L. 2005. "Resources and Rebellion in Aceh, Indonesia." In Paul Collier and Nicholas Sambanis, eds., *Understanding Civil War: Evidence and Analysis.* Washington, D.C.: World Bank Group <https://openknowledge.worldbank.org/handle/10986/7438>.

62. As quoted in Miller, Michelle A. 2006. "What's Special about Special Autonomy in Aceh?" In Anthony Reid, ed., *Verandah of Violence: The Background to the Aceh Problem,* Singapore: NUS Press <https://nuspress.nus.edu.sg/products/verandah-of-violence>.

institutional shift that allowed Acehnese civil society the space to argue for good governance and democratic accountability.[63]

Requests for good governance, even when expressed in the need for a referendum on self-rule, differed from GAM's position. Whereas GAM advocated for independence on ethnonationalist grounds, and initially rejected the idea of a referendum on the basis that Aceh already had a long history as an independent state, civil society framed its calls for independence as part of a civic nationalism that prioritized democratic principles and respect for human rights.[64] As GAM commanders began to have more contact with NGOs and local press, they warmed to the idea of a referendum, albeit in a framework that maintained Aceh's unique identity. For one, the demand for a referendum could provide GAM with much sought-after international legitimacy, given the increased global attention to issues of governance and human rights during the 1990s. It was not lost on GAM that after 1998, international NGOs and diplomats paid increasing attention to Aceh, and provided funding for human rights investigations and civil society empowerment initiatives. GAM slowly assimilated these issues into their own narrative.

Democratic reforms within Indonesian political circles also altered the conflict's dynamics. Suharto's successors, former presidents B. J. Habibie (1998–1999) and Abdurrahman Wahid (1999–2001), made sweeping democratic reforms across the country with the aim of promoting civil liberties. With regard to Aceh, both presidents sought to placate civil society and pro-independence activists through a number of concessions. They attempted to rein in the military, and pushed through a Special Autonomy law that gave the Aceh provincial government control over local legislation. Much to the ire of military commanders, the government also reached out to negotiate with GAM directly through the Henri Dunant Centre. It facilitated a humanitarian pause to the conflict in 2000, and in 2002 agreed a Cessation of Hostilities Agreement (CoHa).

A Settlement is Reached

However, steps taken by the central government ultimately failed. Many Acehnese rejected the Special Autonomy law on grounds that it did not provide a serious solution to the conflict nor did it address the grievances felt by Acehnese. According to a poll taken in 1999, support for autonomy amongst Acehnese was at 25.3 percent compared to 56 percent for a referendum.[65] Moreover, the CoHa would not last, as the conflict erupted again in 2003. Importantly, although these concessions moved dialogue on Aceh's status in the right direction, GAM had not yet given up

63. Aspinall, Edward. 2009. *Islam and Nation: Separatist Rebellion in Aceh, Indonesia.* Stanford, Calif.: Stanford University Press <https://www.eastwestcenter.org/publications/islam-and-nation-separatist-rebellion-aceh-indonesia>.

64. Ibid.

65. Miller, Michelle A. 2006. "What's Special about Special Autonomy in Aceh?" In Anthony Reid, ed., *Verandah of Violence: The Background to the Aceh Problem,* Singapore: NUS Press, 299 <https://nuspress.nus.edu.sg/products/verandah-of-violence>.

the idea of gaining independence through armed struggle. From 1998 onwards GAM had been able to rebuild its insurgency, talking openly to Acehnese society via village gatherings and via the newly free media. By 2001, GAM had increased its numbers to anywhere between 15,000 and 27,000 men, extending its influence across much of rural Aceh.[66] With this territorial expansion came greater funds, as GAM expanded its shadow system of taxation.

By taking advantage of the political opportunities offered by Suharto's resignation, GAM was able to relaunch its insurgency, which peaked between 2000 and 2001. As violence increased, efforts to find a negotiated settlement floundered as mutual mistrust grew. In 2003, GAM leaders refused an ultimatum from the Indonesian government to accept special autonomy, and in response, Indonesia declared a military emergency in Aceh. The emergency was detrimental to both GAM aspirations and for Acehnese society more broadly. International NGOs were forced out of the province, and human rights organizations began to record a number of human rights abuses and extrajudicial killings.[67] For GAM, the increased presence of Indonesian military forced it to retreat into the mountain regions and away from villages, greatly reducing its influence and capacity to operate.

Even before the tsunami hit, GAM's elite had thus come to realize that an outright military victory was impossible. Accordingly, when the Indonesian government, now under the administration of President Susilo Bambang Yudhoyono, expressed a willingness to return to negotiations in late 2004, GAM's negotiators readily agreed. Moreover, as the devastation caused by the tsunami became apparent, international pressure for both sides to find a settlement increased. Negotiations were now under the purview of the Crisis Management Initiative (CMI) of former Finnish president Martti Ahtisaari, who offered a different approach to that taken by the Henri Dunant Centre. Rather than getting both sides to agree a ceasefire before negotiating a political settlement—as had been the case previously—Ahtisaari required both sides to agree on the broad outlines of a political formula before any ceasefire could be put into effect.[68]

This requirement ultimately meant that GAM had to set aside its rigid demand for independence if it wished to enter negotiations. Everything else was ostensibly on the table, provided Aceh remain within the framework of Indonesia. GAM eventually agreed to this demand in February 2005, much to the disappointment of its most avid supporters. Yet, events on the ground ultimately influenced this policy shift. From a military perspective, GAM was in a weaker position than it had been when negotiations had previously taken place between 2000 and 2002. Politically, too, the

66. International Crisis Group. 2001. *Aceh: Why Military Force Won't Bring Lasting Peace.* Brussels: ICG. 7 <https://www.crisisgroup.org/asia/south-east-asia/indonesia/aceh-why-military-force-wont-bring-lasting-peace>.

67. Human Rights Watch. 2003. *Aceh Under Martial Law: Inside the Secret War*. C; 15, no.10. Washington, D.C.: HRW <https://www.hrw.org/reports/2003/indonesia1203/>.

68. Aspinall 2009 <https://www.eastwestcenter.org/publications/islam-and-nation-separatist-rebellion-aceh-indonesia>.

demand for independence had begun to shift from one based on ethnonationalism to one about civic representation, thus allowing for space for a political settlement that had a more flexible understanding of self-government. Amongst the civilian population, the tsunami had also devastated families and communities, and left little appetite—even amongst supporters of independence—for further prolonged conflict. With the international attention Aceh was now receiving, GAM had an opportunity to garner global credibility and sympathy for its cause, although it also recognized that this could quickly fade should it refuse to negotiate through the CMI. All of these factors ultimately assisted in altering GAM's negotiating strategy to one where it would demand self-government within Indonesia.

It was not solely GAM that made concessions, though, as the Indonesian government also acquiesced to GAM's demand for greater self-government and autonomy in the province. Alongside a commitment to strengthen the special regional autonomy of Aceh (in line with the 1999 law), the government agreed to greater provisions on political participation, human rights, and local control over economic matters—essentially giving Aceh's regional government control over all matters excluding security, foreign policy, and national fiscal and juridical regulations. Crucially, Indonesia allowed Aceh to have its own political parties, thus forgoing national rules that required a political party to be nationally orientated and to have a presence in every province of the country. This allowed GAM leaders to create their own political parties, and contest regional elections. As negotiations progressed, both sides also agreed to de-escalate military forces in the province. Indonesia settled to pull out all nonorganized military forces, while GAM agreed to demobilize its forces and give up arms. The Indonesian government would provide $150 million for the reintegration of GAM guerrillas, and the Aceh Monitoring Mission, sponsored by the European Union and Association of Southeast Asian Nations, would monitor the cessation of hostilities.

The use of international monitors to oversee demilitarization and the ability for GAM commanders to compete in elections provided two essential aspects that guaranteed the success of these negotiations. In contrast to previous cessations, in which warring parties used lulls in hostilities to regroup and replenish their forces, the monitoring mission ensured that provisions for demobilization were followed through. There was now international accountability, and a team who could act as a mediating voice between military and guerrilla forces, who remained suspicious as to whether the other would adhere to the provisions. For GAM's commanders, they could also shift their struggle to the ballot box—emphasizing Aceh's unique identity and cultural rights not as part of an ethnic call for independence, but as the basis for a democratic political platform. Yet for GAM's aspiring class of politicians, elections were more than just about representing "Acehnese rights;" they also provided a crucial way into the patrimonial political economy that exists in much of Indonesia. Gaining office could provide one with recognized political clout, but also a way to enrich one and one's supporters with lucrative contacts and contracts.

A Lasting Peace

Despite all the headway made during the negotiations, the lasting success of the Helsinki talks was in no way certain. By the time the Indonesian legislature passed the LoGA, many aspects had been watered down. For instance, key provisions concerning a human rights tribunal were delayed due to a lack of political will. In 2016, the Acehnese government finally appointed a Truth and Reconciliation Commission, but its progress continues to be hampered by a lack of funds and noncooperation from Jakartan officials. Furthermore, the MoU was an agreement between GAM and the Indonesian government, with civil society voices—especially those who could speak to gender dynamics—largely left unheard. As such, many aspects of the conflict, such as addressing gender-based violence or community mediation, received little official buy-in. Within Aceh itself, the postpeace settlement era saw a rise in tensions within GAM ranks as former guerrillas competed for reintegration funds and access to posttsunamic reconstruction contracts. Among GAM's elite, too, there were fierce disagreements as to who was best place to represent Acehnese interests, with local commanders and exiled leaders often at odds with each other. Indeed, in the years following the agreement Aceh has seen no less than eight political parties emerge, all of which aim to represent Acehnese aspirations.

Yet the peace settlement has largely held together. There is little appetite from either side to see a return to hostilities, and while violence does occasionally arise—especially around elections—this is often due to internal political or economic competition between former GAM (and occasionally military) units. GAM commanders were in large part successful in remodeling themselves from guerrillas into business entrepreneurs and racketeers, often employing their former guerrilla fighters to maintain a degree of loyalty and patronage. While such a transformation is far from ideal, it has nevertheless provided former combatants with an inevitable stake in maintaining the peace. A return to conflict could risk these business ventures and allow the military, which had played a similar role in the shadow economy during the conflict, back into the fold.

The peace also held due to the role GAM commanders were now able to play as politicians or as political kingmakers. They may not have achieved independence, but the settlement turned them from perceived outlaws into statesmen. In the December 2016 elections, candidates nominated by GAM won in six of the 19 municipality and district votes, a number that would increase in following elections. Moreover, former GAM members have won every gubernatorial election since the peace process. Further, the ability to create political parties was but one part in a broader structure that recognized Aceh's unique identity. Through the peace agreement, special institutions were established to promote Acehnese culture and religion, including the establishment of the office of *Wali Nanggroe* (the cultural head of Aceh), and Acehnese Shari'a courts. For certain, these institutions did not represent the first time the Acehnese were involved in the local bureaucracy (as

they had been during much of the conflict, too), but it did go a long way to recognize the local cultural dynamics that underpinned ethnic claims that distinguished Aceh from other parts of Indonesia.

With the creation of new political, cultural, and religious offices comes a new set of challenges. Institutionalizing Islamic tenets and punishing individuals for not attending mosque or for committing "morality" crimes, such as adultery, undermines the very civil rights that many Acehnese activists had initially fought for. The use of caning for adultery and homosexuality, which has increased across the province since it was introduced after the peace settlement, has proved particularly controversial. Not only do such events raise concerns on human rights grounds, but they also talk to a broader issue concerning who represents Acehnese culture and identity within postconflict society. At the turn of the 21st century, GAM and civil society had found common ground in their opposition to Indonesian military actions, but they were expressing themselves through very different ethnic and civic arguments. While GAM assimilated civic arguments into its rhetoric, the mechanisms to protect these were largely secondary to their demands for greater ethnic political representation. Accordingly, while the peace has largely held—and very much remains a success story—challenges over the empowerment of Acehnese remain ever present.

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Bougainville Case Study

Anna Dziedzic and Cheryl Saunders

Introduction

Bougainville, a region within the state of Papua New Guinea (PNG), has long struggled for self-determination. Unmet demands for greater local control over Bougainvillean land and affairs lay beneath a decade-long armed conflict, from 1988 to 1997. The conflict had a devastating impact. An estimated 10 percent of Bougainville's population of 250,000 died as casualties in conflict or from the lack of medical and security services, while 40 percent of the population was internally displaced. As a small island region within a developing state, Bougainville's people, economy, and infrastructure are still recovering decades later.

The peace process that ended the conflict promised Bougainville a high degree of autonomy within PNG and a deferred referendum on Bougainville's future political status. Since the Peace Agreement was signed in 2001, Bougainville has experienced nearly two decades of relative peace.

Bougainville provides an important case for exploring self-determination in conflict prevention and resolution. But the nature of the conflict in Bougainville did have two distinctive features that affected the form of self-determination. First, Bougainville's self-determination claim was territorially defined rather than a concern about minority or indigenous rights, and as a result, the focus has been on self-governance rather than minority representation or shared rule. Second, the conflict had two dimensions—an intra-Bougainville conflict between different groups and an intrastate conflict between PNG and Bougainville—that informed both the peace process and the constitutional changes to deliver self-determination.

Causes and dimensions of the conflict

The conflict was triggered by grievances about the distribution of revenue from a large copper mine situated in Panguna in the center of Bougainville. The mine had been established while PNG was an Australian colony, and it was owned and operated by a subsidiary of an Australian mining company. After PNG became

independent in 1975, royalties from the mine mostly went to the national PNG Government, while Panguna landowners received only a small proportion. Grievances about the unfair distribution of mining revenue were compounded by limited employment opportunities for Bougainvilleans, the influx of outsiders, which unsettled traditional social structures, and the environmental damage and displacement of communities as a result of mining. In 1988, protesters sabotaged mining assets, provoking a heavy response from PNG security forces. Landowner associations militarized, creating the Bougainville Revolutionary Army. Conflict spread and became a civil war.

The mine was closed in 1989. The PNG Government pulled its officials out of Bougainville and imposed a blockade. PNG's campaigns to quell the violence with force were met with armed resistance and there was no clear victor.

The conflict mobilized a long-standing secessionist movement, which had its roots in the moment of PNG's independence. Bougainville's leaders had been vocal advocates for decentralized government and autonomy. They had, in 1975, made a unilateral declaration of independence. Bougainville's claims did not foreground minority status (PNG is a highly diverse state comprising over 800 different language groups; Bougainville itself has 25 language groups). Rather, Bougainvilleans resented the exploitation of their resources by the central and foreign governments, and sought local control over their land and affairs.

The conflict also took on an internal dimension as armed groups within Bougainville split into factions, committing acts of violence against each other and local communities that often had more to do with clan rivalries and local disputes than self-determination.

The peace process and the form of self-determination had to respond to both the intra-Bougainville conflict and the intrastate conflict between Bougainville and PNG.

Formal peacemaking and community reconciliations

Peacemaking efforts began early in the conflict, with 11 peace initiatives over the course of the 1990s. Formal negotiations first found success at the Burnham talks, held in New Zealand in 1997. Reflecting the two dimensions of the conflict, the first round of Burnham talks held in July 1997 involved Bougainvilleans only; PNG government representatives were included in second-round talks three months later. The resulting Lincoln Agreement set out a process for further negotiations, security, international monitoring, the disposal of weapons, and amnesties. From 1999 to 2001, negotiations focused on the major points of political contention, namely autonomy for Bougainville and a referendum of the people of Bougainville on the question of independence, as well as weapons disposal. The Bougainville Peace Agreement (BPA) was signed on 30 August 2001.

Formal peace talks by leaders were complemented by community-level reconciliations between families and villages, drawing on local customary and Christian traditions. Local-level peace building was based on the Arawa Peace Conference of 1994, which involved 1,200 members of Bougainville civil society and which assisted local communities, especially women, to establish and spread zones of peace.

The peace process was characterized by substantial local ownership. The Bougainville side included many of the previously warring factions, although significant groups, including the Me'ekamui (who controlled a no-go zone around Panguna), chose to remain outside the peace process. The process was also inclusive of civil society more broadly, which facilitated the local reconciliations across Bougainville. International actors were involved in facilitating peace talks, ensuring security, and monitoring weapons disposal, but local actors largely mediated their role.

Three pillars of peace

The BPA had three core pillars. The first pillar was a high degree of autonomy in the governance of Bougainville. This included the establishment of a Bougainville government operating under its own Constitution, with responsibility for a wide range of government functions.

The second pillar was a guaranteed referendum on Bougainville's future political status to be held between the 10- and 15-year mark after the election of the first Bougainville government. Reflecting a compromise made in the peace negotiations, the referendum is not binding, but subject to the final decision-making authority of the national PNG Parliament.

The third pillar was a staged plan for the disposal of weapons, with each stage tied to the implementation of other aspects of the BPA. Bougainville ex-combatants were obliged to move their weapons into secure storage only once the PNG Parliament had made the constitutional amendments required by the BPA. Meanwhile, the constitutional amendments would not come into effect until the United Nations mission in Bougainville had verified the disposal of weapons.

The following discussion of implementation focuses on autonomy and the referendum as the pillars that relate most to self-determination.

The challenge of implementation

The translation of the provisions of the BPA into law occurred relatively quickly. A joint committee worked together to draft a new chapter of the PNG Constitution and an accompanying *Organic Law on Peace Building in Bougainville,* which were

passed by the PNG Parliament in March 2002. The Bougainville Constitution was drafted by a broadly representative commission, subject to several rounds of public consultation, approved by a Bougainville Constituent Assembly and endorsed by the national parliament by the end of 2004. This aspect of implementation was facilitated by the emphasis placed by Bougainville parties on constitutional entrenchment during peace negotiations, the level of detail already agreed in the BPA, and the sequencing arrangements that tied weapons disposal to the constitutional amendments.

Autonomy

Substantive implementation of the autonomy arrangements, however, faced a range of challenges. Giving effect to the high degree of autonomy set out in the BPA required the creation of institutions of government in Bougainville, including a parliament, executive council, and public service. It also required the transfer of functions and resources from the central government of PNG to the Bougainville government. Both would take some time. It would require the new Bougainville government to develop the knowledge, skills, institutions, and processes to exercise its newly acquired functions and responsibilities. It would also require the PNG government to transfer power and control over many functions to Bougainville, and adjust to its new status as an autonomous region rather than just another province.

The BPA assigned 58 governmental powers and functions to the Bougainville government, with the PNG government retaining functions of a national character, such as defense, foreign relations, immigration, and international trade. Rather than confer new responsibilities immediately, the BPA and the Constitution set out a process for Bougainville to initiate the transfer of each power and for the relevant PNG and Bougainville government agencies to develop an implementation plan, taking into account the continuity of government services and the capacity and resources required. The complexity of the transfer process, limited funds, and some instances of cultural resistance within the bureaucracy contributed to the slow and incomplete transfer of functions.

The BPA also committed the PNG government to providing various annual financial grants to support reconstruction and government in Bougainville. The Bougainville government is highly dependent on these grants to cover the costs of government services, and delays and disputes about the amounts payable caused tension and mistrust in the relationship between the two governments.

There was no timeline for the implementation of the autonomy arrangements. The interim period leading up to the referendum was expected to be a time when Bougainville could establish self-government and PNG could demonstrate the benefits of Bougainville remaining an autonomous region within PNG.

The techniques of delay and deferral in the implementation of autonomy had both positive and negative effects. Without the pressure of a tight time frame, the Bougainville government could respond to local priorities and develop its capacities in a sustainable way. But the passage of time, the loss of institutional memory, and new priorities in PNG did affect the urgency of implementation, and gave rise to some mistrust about the political will in PNG and Bougainville to adhere to autonomy.

Referendum

The implementation of the referendum pillar of the BPA also faced practical challenges. In contrast to the autonomy arrangements, there was a hard deadline of mid-2020 for the conduct of the referendum. The BPA and Constitution included little specific detail on the conduct of the referendum, leaving this to be determined by consultations between the two governments. This took some time coming. The Bougainville Referendum Commission to administer the vote was established by charter in August 2017 and commenced work in October 2018, less than a year before the target date for the poll of mid-2019. The date of the poll was postponed twice to provide more time for voter registration and the provision of information to voters. Some blamed the delay on the slow provision of funds from the national government, exacerbating fears in Bougainville that the referendum would not proceed.

The poll was conducted from 23 November to 7 December 2019. Voters were asked to choose between two options: greater autonomy and independence. Of the votes counted, 97.71 percent were in favour of independence, with a turnout rate of 87.4 percent. The referendum was peaceful, with a high level of community engagement, and met international standards of a free, fair, and credible election.

The result of the referendum is not binding. The BPA and the Constitution require the governments of PNG and Bougainville to consult over the results, and the outcome must be ratified by the national parliament. While the outcome of the consultations is at the time of writing unknown, on any view it will involve a form of self-determination for Bougainville, whether inside or outside the state of PNG or in some kind of special relationship with it. The immediate challenge for both governments is to establish a process for consultations and guiding principles that respect the referendum results, maintain the trust of the people, and continue the peace that has held for nearly two decades.

Insights from Bougainville's experience for addressing self-determination conflicts

Bougainville's experiences provide some insights for the prevention and resolution of conflicts involving issues of self-determination. The BPA addressed the desire in Bougainville for greater self-governance through a high degree of autonomy and

a delayed referendum on independence, and these provisions were entrenched in constitutional law. The peace process and its implementation have been locally owned and led, and broadly inclusive of different groups and interests in Bougainville. Inclusiveness, national ownership, and constitutional entrenchment built a strong framework for realizing self-determination and addressing the conflict.

Features of the Bougainville case study also suggest some ways to facilitate the implementation of self-determination. These include reasonably detailed provisions for constitutional changes in the BPA, a degree of flexibility in the time frames for achieving autonomy and the referendum, and the emphasis on a process that reflected strongly held cultural values of consultation and consensus in resolving disputes.

The efforts of peacebuilding, autonomy, and the delayed referendum have been sufficient to sustain peace in the period between the signing of the Bougainville Peace Agreement and the referendum. The challenge now facing PNG and Bougainville is to agree the final form that Bougainville's self-determination will take and create the foundations for a new and peaceful relationship between the two polities.

Mindanao Case Study

Steven Rood

Introduction

Although the Philippines is more than 90 percent Christian, a legacy of Spanish and American colonial rule, in the islands closest to the rest of the Southeast Asian Malay archipelago there is a concentration of Muslims. Beginning in the 1960s there has been organized, separatist armed struggle, punctuated since the mid-1970s by repeated negotiations and agreements with separatist fronts that were not implemented by the national government. The most recent agreement is the March 2014 Comprehensive Agreement on the Bangsamoro, which is currently being implemented through a Bangsamoro Organic Law that established a three-year appointive Bangsamoro Transitional Authority, slated to be replaced by an elected regional parliament in the May 2022 Philippine general elections. This case study traces the background and timeline of the conflict before eliciting some insights from the ongoing process of conflict resolution about the prevention and resolution of self-determination conflicts.

Background to the Conflict

By the time Spain established a permanent presence in the Philippines in 1565, Islam had been moving through the Malay Archipelago for centuries as traders and missionaries brought both their religion and an idiom for state building, utilized by those who became sultans. In these Philippine islands, the eastern end of the larger archipelago, the Sultanate of Sulu was established circa 1450 and Sultanate of Maguindanao on the main island of Mindanao circa 1515. A branch of the Sultan of Brunei ruled Manila but Spain's conquest of Manila in 1571 ended the existence of Islam in the northern and central regions of the country, confining it to the south (Mindanao and the Sulu archipelago).

The centuries that followed included long hostilities between Spain and these Muslims, whom the Spaniards called *Moros* after the Moors they had fought so long in the Iberian Peninsula. Spain only achieved a permanent presence in Zamboanga City (centrally situated between the Sultanates of Maguindanao and Sulu) in 1718. The Moros, for their part, launched raids throughout the archipelago, and the Sulu Sultanate seized some 300,000 slaves (throughout sparsely populated southeast

Asia, control over persons was more important than control over particular geographic areas).

This conflict over centuries still resonates in the Philippines. There is considerable concern about long-standing anti-Muslim prejudice, which was given full rein during media coverage of the January 2015 Mamasapano incident, when a botched police raid in a Muslim community led to the death of 44 members of the Special Action Force. Still, most Christians express on surveys a generally favorable attitude towards Muslims (as do Muslims of Christians). In 1977, President Ferdinand Marcos issued a martial law decree establishing the Code of Muslim Personal Laws of the Philippines. There has long been a specialized national government agency dealing with Muslim issues. In the past decade, two Muslim holidays have been officially declared for national observance, Eid al-Fitr and Eid al-Adha.

In the mid-19th century, the Spanish colonial government acquired steam-powered gunboats, which finally gave it an advantage in Muslim areas in the southern Philippines. In 1878, the efforts to pacify the archipelago resulted in a treaty of pacification and capitulation with the Sultan of Sulu.

When the Americans arrived in 1898, the Moros declined to join the resistance undertaken by Christians in Luzon and the Visayas. As hostilities in Luzon died down after 1902, the Moro Wars erupted as the Americans extended their authority in the south. There were several agreements with local rulers, and by 1915 the Sultan of Sulu signed an agreement stating his "recognition of the sovereignty of United States of America." In the end, most Muslim leaders reached accommodation with the national political process under colonialism, the 1935 Commonwealth, and the independent Republic after World War II. Conversely, in 1935, 150 sultans and other leaders from Lanao asked to be excluded from the grant of independence to Luzon and the Visayas. This Dansalan Declaration is often cited as an early separatist initiative.

In the aftermath of World War II, Philippine independence was achieved in 1946 and Mindanao began to experience an increased number of Christian settlers from the rest of the country. Although separatist narratives cite various government land laws that discriminated against Muslims and official government schemes that encouraged migration, the vast majority of migrants were spontaneous and were in fact welcomed by Muslim elected leaders to help develop the economy of the region. It was often the non-Islamized Indigenous people, now collectively called the *Lumad*, who were displaced from their sparsely settled territories.

Timeline to the Conflict

But by the late 1960s, Muslim and Christian communities began to rub up against each other, particularly in central Mindanao. The area had long been awash with

weapons, so some communal violence began to break out. The Philippine state also began to intrude more into local arrangements, including dividing the Empire Province of Cotabato into smaller units, reducing the scope of Muslim political dominance. Organizing by Muslim activists was paralleling an upsurge in Marxist activity (there was some initial cross-fertilization), and some military training was ongoing with support from sympathetic Muslim countries.

Two incidents are generally cited as triggers of organized separatist movements. In March 1968, Tausug recruits, supposedly destined for an "Operation Jabidah" to recover Sabah from Malaysia, were massacred during training, allegedly after they mutinied. In May of the same year, former Cotabato governor Udtog Matalam announced the Muslim Independence Movement—many have attributed this to his reaction to the Jabidah Massacre, but the roots are more likely in local politics as Marcos had backed a political rival of Matalam for office.

Increasing unrest in Mindanao, the encroachment on the political power of traditional Muslim officials, and political ferment in Manila formed the backdrop to the organization of the Moro National Liberation Front (MNLF), most prominently by its founding chair, Nur Misuari. Misuari was educated at the secular University of the Philippines and was influenced by Marxist organizing but by 1971 was organizing among Muslims. Throughout the early 1970s, Muslim countries, including Libya and Pakistan, provided support for the Muslim rebellion, although the MNLF was ethnonationalist rather than Islamic in ideology. After Marcos declared nationwide Martial Law in 1972, fighting spread in Mindanao, culminating in the MNLF seizure of Jolo, the capital of Sulu, in February 1974. The Philippine military retook the city with the use of heavy artillery, including naval bombardment, in what is known as the Burning of Jolo.

Although initially there was international support for the insurgency, there was also continuous international involvement in the search for a negotiated solution. The Organization of the Islamic Conference (OIC) has been involved in reaching settlements with the MNLF for almost 50 years. In July 1974 (after diplomacy by the Philippines), the Fifth Islamic Conference of Foreign Ministers in Malaysia called for "a just solution to the plight of Filipino Muslims within the framework of the national sovereignty and territorial integrity of the Philippines."[69]

With this bottom line emphasized, the Philippine government accepted international involvement in negotiations, resulting in the 1976 Tripoli Agreement. The agreement called for an autonomous region covering 13 provinces, but when Marcos regained the initiative in the domestic implementation, he set up two different autonomous regions covering only 10 provinces. This set a pattern for

69. Rood, Steven. 2016. "The Role of International Actors in the Search for Peace in Mindanao." In Paul D. Hutchcroft, ed., *Mindanao: The Long Journey to Peace and Prosperity.* Mandaluyong, Philippines: Anvil Publishing, Inc. 65 <https://www.anvilpublishing.com/ebooks/mindanao-the-long-journey-to-peace-and-prosperity>.

the next four decades: the MNLF refused to accept Marcos's faulty implementation of the 1976 agreement, a new breakaway movement claiming to represent Moros sprang up,[70] and sporadic fighting occurred, sometimes displacing hundreds of thousands of people. Here is a brief timeline of this dynamic:

- In 1984 the Moro Islamic Liberation Front (MILF) was established by MNLF members dissatisfied with the leadership of Misuari. It was headed (until his death in 2003) by Hashim Salamat, an Islamic scholar from Al Azhar University who had been vice chair of the MNLF).
- After Marcos's ouster in 1986, the MNLF reached the Jeddah Accords with the Corazon Aquino government. The government then violated the accords by going ahead with a different autonomy process that was mandated in the new 1987 Constitution (the MNLF refused to participate in any way in the constitutional autonomy process as it was very different from the substance of the accords).
- The 1996 Final Peace Agreement was reached with the MNLF under the auspices of the OIC, after which the MILF began negotiations with the government in 1997.
- In 2000 the government launched an all-out war against the MILF; then the MNLF rejected the 2001 revision of the autonomy law supposedly implementing the Final Peace Agreement. Misuari (who became governor of the Autonomous Region in Muslim Mindanao (ARMM) as part of the 1996 agreement) led a brief rebellion and was then jailed. Arguments over the implementation of this Final Peace Agreement went on until January 2016 in tripartite meetings among the MNLF, OIC, and the Philippine government, when an agreement was reached but not implemented.

The 2008 Memorandum of Agreement on Ancestral Domain (MOA-AD), reached with the MILF after more than a decade of peace talks facilitated by Malaysia, was declared unconstitutional by the Philippine Supreme Court. The resulting upsurge of fighting caused the displacement of 780,000 persons.

In 2014, the Government reached with the MILF the Comprehensive Agreement on the Bangsamoro. But a botched antiterrorism raid in January 2015 delayed

70. The Abu Sayyaf Group, an armed extremist group still active in the southern Philippines, was formed in the late 1980s. It advocates an Islamic caliphate and objected at the time to the MNLF negotiating with the government. When the MILF returned to the negotiations in 2009, the Bangsamoro Islamic Freedom Fighters broke away under the leadership of Ameril Umbra Kato, advocating for Moro independence from the Philippines. Elements of both these groups affiliated with Islamic State in 2014, and attacked Marawi City in 2017.

its implementation, which resulted in 44 deaths from the Philippine National Police (as well as MILF, the Bangsamoro Islamic Freedom Fighters (BIFF), and civilian casualties). The succeeding administration of Rodrigo Duterte passed a Bangsamoro Organic Law through Congress, and had it ratified in a plebiscite in January 2019. A MILF-led Bangsamoro Transition Authority was appointed, including non-MILF personalities, to hold office until elections in May 2022 for a regional parliament, synchronized with the national general elections. There are hopes that the current implementation of the latest set of agreements breaks the pattern of nonimplementation reaching back to 1976.

Insights

International Involvement

From the beginning, external involvement has been important to facilitating the process. In the early 1970s both the Moro insurgents and the Philippine government courted support from members of the OIC. The OIC's position that support would be dependent on the territorial integrity of the Philippine state gave government negotiators confidence that vital interests would be respected. While some Moros still long for independence, with the exception of violent extremists (see footnote 70) all separatist movements have agreed to negotiate for greater autonomy for the region that is majority Muslim. After the 1996 Final Peace Agreement, which suffered from a lack of implementation, the OIC also oversaw the Tripartite Process with the government and the MNLF, reaching its conclusion in 2016. This process tended to be overshadowed by negotiations with the MILF and the provisos of the concluding document have tended not to be fulfilled.

Negotiations with the MILF, after some initial rounds held domestically, were facilitated by Malaysia. These negotiations, which reached the Comprehensive Agreement on the Bangsamoro in March 2014, introduced several innovations to try and learn the lessons of previous failures. One new initiative was an International Monitoring Team (IMT) led by Malaysia, which initially (in 2004) was entirely formed of unarmed military personnel but later included civilian development and human rights experts. The IMT has a permanent presence in the area, with headquarters in Cotabato City and offices elsewhere in mainland Mindanao. The countries providing the personnel fund the salary and per diems, while the Philippine government funds other operational expenditures. Initially, the IMT monitored a cessation of hostilities negotiated in 2001, but as further agreements were signed its scope of operations broadened.

As the parties tried to reengage after the 2008 upsurge in violence and displacement associated with the abortive MOA-AD, a more robust international presence was added to the Malaysian-facilitated negotiations: the International Contact Group (ICG). It comprised four countries—Japan, the Kingdom of Saudi Arabia, Turkey, and the United Kingdom—and four international NGOs—The Asia Foundation,

Conciliation Resources, the Humanitarian Dialogue Centre, and Muhammadiyah. These participants typically stayed along the margins of the negotiations, speaking only when asked to do so by the parties or the facilitator, but their input did increase when substantive details were being worked out (for example, on regional police or fiscal powers).

Self-governance

In all the negotiations that resulted in agreements in 1976, 1996, and 2014, the autonomy that was being envisioned was a level of government above the provinces, which in the rest of the Philippines are the next level down from the national government. It was also clear that positions in this new level of government were being offered (at least initially) to the leadership and cadre of the armed fronts. This gave these fronts' negotiators confidence of future influence, while causing some adverse reaction among the existing elected leadership in these areas dominated by Muslims (which reaction the national government sought to allay).

The MNLF and MILF benefitted from self-governance arrangements in both the 1996 and 2014 agreements. MNLF's Misuari became the (nominally elected) governor of ARMM after the 1996 Final Peace Agreement. The current Bangsamoro transition process is, by negotiated agreement and subsequent appointment, MILF-led but with minority representation for non-MILF elements (government, non-Misuari MNLF, Christian, and Indigenous people), although the MILF has repeatedly said this arrangement will only last until the 2022 general election, after which the electoral results will determine who is in charge of the BARMM. An important governance improvement was the institution of a fixed, formula-driven block grant from the Philippine national government to the BARMM, which provides it with a predictable revenue stream with which to encourage more autonomy. Under the old ARMM, the regional government had little fiscal autonomy, whereas now the BARMM has the flexibility to budget (within some overall rules) each year.

One of the unique characteristics of the new BARMM is that it is parliamentary in form (termed ministerial to avoid unpleasant associations with an initiative of the dictator Marcos). All other elected government units in the Philippines, from the national to the village level, have directly elected executives and a separate legislative body of some sort. In the past, proponents of autonomous regional government[71] have desired parliamentary processes as more aligned with traditional or indigenous culture but were stymied in the past by a prevalent constitutional opinion that it was not possible under the 1987 Constitution. However, in the run-up to the 2012 Framework Agreement on the Bangsamoro, the government negotiating panel

71. In this context, we can point out that the autonomy provision of the 1987 Constitution applies to the highland people of the Cordillera in northern Luzon, but for a number of reasons this potential autonomous region has never been operationalized.

decided to "explore the flexibility of the Constitution"[72] and agreed to the MILF demand—a symbolic victory for the MILF.

This parliamentary setup does have a potentially important consequence that may become manifest in the 2022 general elections. Local elective politics in the region (as is the case across the entire Philippine archipelago) are dominated by local notables, strongmen, or even warlords. The MILF has stood up the United Bangsamoro Justice Party (UBJP) to field candidates for the regional assembly, but it may be overwhelmed by traditional politicians who have decades of experience in winning elections. The process of deciding which among them will be the chief minister heading the Bangsamoro government may prove to be an obstacle to achieving the kinds of self-determination gains the MILF has sought.

Inclusion

One of the characteristics of the process over the decades was that the Philippine government focused on neutralizing and engaging those personalities with arms and armed groups—first the MNLF and then, beginning in 1997, the MILF. Although local elected officials—overwhelmingly Muslim in the affected areas—were occasionally appointed by the government as individuals to positions in the peace process, there was no systematic way for local civilian sentiment to be input directly into the negotiations. Rather, the government side conducted consultations that were sometimes robust and sometimes distressingly absent. In short, there was no direct inclusion of other groups, and very little indirect inclusion. Civil society proposed a Mindanao contact group to parallel the ICG, but was told that the terms of reference of the ICG included acting as a bridge to Mindanao civil society. Although the ICG reached out from time to time, particularly those members based in the Philippines, the peace movement was generally not interested in utilizing such an indirect channel.

Throughout the processes beginning in the 1970s, the general need for confidentiality in negotiations usually outweighed any efforts to make efforts as it as inclusive as possible. The government maintained it represented the citizens of Mindanao and the nation; the fronts—first the MNLF and then the MILF—maintained that they represented the Moros. However dubious these representational claims were, the broad international community treated the negotiating parties as ones with a right to be involved in the negotiations. The international community and many domestic interests urged the parties to be more inclusive, in part to avoid unpleasant surprises when draft agreements finally became public. Indeed, when the 1996 Final Peace Agreement with the MNLF was made public, and the MOA-AD with the MILF leaked into the public domain in 2008, widespread demonstrations in opposition occurred in central and western Mindanao.

72. Casauay, Angela. 2015. "Framers of Constitution Back Bangsamoro Autonomous Region." Rappler.com. January 13 <https://www.rappler.com/nation/constitution-framers-support-bangsamoro>.

Government consultations with a broader public became more intense after the 2008 debacle. In the end, though, when agreement was reached with the MILF in 2012 (the Framework Agreement on the Bangsamoro) and 2014 (Comprehensive Agreement on the Bangsamoro) there were still claims that a particular sector, geographic area, or personage had not been consulted. Generally, this meant that their recommendations or opinions had not been included in the agreements.

A particular inclusion issue is regarding Indigenous peoples comprising several ethnolinguistic groups known generically as *Lumad.* They tend to be a "minority within a minority" and how to accommodate their interests was a contentious point in the negotiations. There is a national Indigenous Peoples Rights Act that provides a process for securing legal title over indigenous, ancestral domain and lands, but that law has never applied within either the ARMM or the BARMM. While there are *Lumad* among the MILF cadre and officials, and the law provides for two reserved seats in the regional legislative assembly for "non-Moro indigenous people,"[73] activists continue to say that the current processes insufficiently addresses their *Lumad* concerns and interests.

Security

Issues of security occupied considerable attention during the final negotiations with the MILF, as an enormous variety of contextual conditions and violent incidents had the potential to derail talks. The most recent stumbling block was the botched raid in January 2015 during which a unit of the Philippine National Police was wiped out in an operation against a Malaysian terrorist who was sheltering with the BIFF (he was killed). While the ceasefire mechanisms between the MILF and the government, including the IMT, were successful in limiting the damage on the ground and containing the violence, the weeks-long nationwide uproar that followed essentially made it impossible for congress to pass legislation to implement the Comprehensive Agreement on the Bangsamoro. It took the election of President Duterte (the first from Mindanao), who insisted on implementation before legislation was passed and ratified in January 2019.

Before this happened, under Duterte's watch the Abu Sayyaf leader (who had been named Emir by Islamic State) moved with his men from Basilan to Marawi City and took it over its center in May 2017, in cooperation with violent extremists from mainland Mindanao. The operation to retake the area lasted five months but interestingly did not pose a challenge to the peace process. The MILF and the ceasefire mechanisms cooperated to maintain a peace corridor so that refugees from the fighting could flee, and the general political conclusion in the country was that the extremist violence in Marawi, though it had anti-Christian elements, mostly

73. In addition, there are two reserved seats for the settler community—meaning Christians and others regarded as having originated from outside Mindanao.

targeted Muslims and their property. Thus, it made political sense to continue with the process of implementing the agreement with the MILF.

Negotiations on security arrangements proceeded under the heading of "normalization" since the MILF disliked the usual international language of disarmament, demobilization, and reintegration. Rather than "disarm" they would put their weapons "beyond use" under the supervision of an internationally headed team (borrowing from the Northern Ireland experience). Instead of "demobilize," the fighters would "decommission" and receive a package of individual benefits. Instead of "reintegration," MILF camps would be "transformed" into productive civilian communities.

Mindanao is a violent place, with private armed groups maintained by politicians and even local businesses (some with official imprimatur). Conflict among clans over honor, land, or political position is rife. Philippine citizens are legally entitled to own up to 15 guns, and estimates are that there are twice as many illegal weapons in the Philippines as legal ones. Thus the prospect of putting arms beyond use was a daunting one. Integral to the process then was:

- the establishment of Joint Peace and Security Teams (JPSTs) consisting of 50 percent MILF and 25 percent each police and government armed forces;
- the launch of a nationwide effort to dismantle private armed groups; and
- the establishment of a separate Bangsamoro police force within the overall Philippine National Police.

These JPSTs have been stood up and trained in various tasks, such as securing arms storage where weapons have been put beyond use. However, they are unarmed inasmuch as the government is reluctant to officially allow MILF members legally to carry weapons openly. There has been no nationwide effort against privately armed groups and President Duterte rejected the Bangsamoro police force.

The MILF decided to accept these realities to move forward with the Bangsamoro Transition process, but as of mid-2020 had only decommissioned 30 percent of its forces. Further decommissioning, as per signed agreements, are conditional on actions to stand up a Bangsamoro police force (which will not happen) and progress against private armed groups (which has not yet happened). Some guarantees are needed so that MILF members and their communities feel secure in a rough neighborhood—and agreements need to be renegotiated.

Historical Memory/Transitional Justice

Centuries of enmity between the Moros and the colonial (in the case of Spain, explicitly Christian) regimes have left a legacy of mistrust that although generally low-level, can flare into intensity, as it did after the botched January 2015 Mamasapano police raid. There is no law against discrimination on the basis of religion (except in the Labor Code); a commonly related experience is that middle-class Moros are refused a real estate transaction once their religion becomes known.

Negotiators in the MILF peace process tried to address these issues by instituting a Transitional Justice and Reconciliation Commission (TJRC) comprising foreign and domestic experts. An extensive consultation process with the aim of having an inclusive conversation on issues of historical memory resulted in the publication in 2016 of its report. Among other recommendations was the establishment of a National Transitional Justice and Reconciliation Commission on the Bangsamoro, legislation for which has been filed in congress but has not progressed much.

The Bangsamoro Transition Authority is taking up measures to establish a Transitional Justice and Reconciliation Commission in the BARMM, which is within its power, but will not address the wider national issues of seeking consensus on history what would allow full reconciliation between the majority Filipino and the Moro communities.

Implementation

In the 2012 Framework Agreement on the Bangsamoro and then in the March 2014 Comprehensive Agreement on the Bangsamoro, several other entities were created (with international involvement) to help ensure that agreements could be implemented. One was an Independent Decommissioning Body, headed by Turkey, which would allow the MILF to put its arms beyond use without having to surrender them to Philippine government authorities. Another was a Third Party Monitoring Team (TPMT). The TPMT was headed by an eminent person jointly agreed by the MILF and the Philippine government, and with two members from international NGOs and two from NGOs based in the Philippines (each paired with one member nominated by the MILF and the other by the government, with the agreement of the other partner).

The Comprehensive Agreement on the Bangsamoro also provided in its time frame an Exit Agreement at the end of the transition period to be crafted among the two sides' peace negotiators, the Malaysian facilitator, and the TPMT, with the aim of avoiding future disputes among the parties over implementation.

Conclusions

The mandate of the MILF-led Bangsamoro Transition Authority runs from March 2019 until the end of June 2022, after which new Assembly members, elected in synch with the May 2022 general elections, will take office. The current political process in the BARMM is an improvement over past iterations, with more resources, greater autonomy, and focused attention on security aspects in a troubled region of the country. A genuine effort by the national government to solve problems (rather than just managing them) has been evident in the past few years, and has been met by a willingness on the part of the separatist fronts to compromise their maximal goals.

Yet a situation that has developed through centuries of history is not easily improved—even leaving aside the increased challenges posed by the COVID-19 pandemic that hit the Philippines hard in 2020. New legal and administrative arrangements must still be finalized at the regional and national level—tasks are complex and time is short. Of particular note is the lack of progress against the plethora of private armed groups, which is likely to increase the reluctance of the MILF to fully decommission its forces. And the private armed groups are often linked to the traditional politicians in the region, who may overwhelm the fledging electoral efforts of the MILF.

Thus, 2022 will be a crucial transition period and the national government—both the security and political establishments must help set the context for a peaceful transition in the BARMM and continued efforts to provide space for the inhabitants to chart their own path to peace and development.

This case study includes material drawn with permission from Steven Rood, *The Philippines: What Everyone Needs to Know®* (2019).[74]

74. <https://global.oup.com/academic/product/the-philippines-9780190920616>.

Northern Ireland Case Study

Dawn Walsh

Background

The 1998 agreement in Northern Ireland, commonly known as the Good Friday Agreement (GFA) aimed to resolve a centuries-long conflict that in its most recent iteration had lasted over three decades and has claimed over 3,000 lives. During this period, a relatively low-intensity conflict usually known as "The Troubles" plagued the region. Violent nationalists and republicans, almost always Catholic, fought a war intended to produce a united Irish state, while nonviolent nationalists attempted to increase their influence and that of the Irish government in the governance of Northern Ireland. Unionists, usually Protestant, sought to maintain Northern Ireland's position within the United Kingdom.

What was the timeline of the conflict and of the negotiations?

The historical roots of the conflict date to the 1600s. Since that time, there has been a pattern of heavy settlement of both English Anglican and Protestant Dissenters in the northeast part of the island of Ireland. Protestants became the majority community. When a form of "home-rule," or devolution, was proposed for Ireland at the beginning of the 20th century, this majority-Protestant community strongly objected, even threatening to fight against its inclusion in the Dublin-based devolution arrangement.[75] In an effort to avoid civil war in Ireland, the Government of Ireland Act 1922 partitioned the island into Northern Ireland (six northeastern counties) and Southern Ireland (the rest of the island). The Northern Ireland statelet that emerged was famously a "Protestant government for a Protestant people," ruled from Stormont in Belfast.[76]

A civil rights movement emerged in the 1960s that protested religious discrimination in the provision of social services. The repressive and violent actions of the police force and the British Army that was deployed in an effort to calm the rapidly

75. O'Malley, Eoin, and Dawn Walsh. 2013. "Religion and Democratization in Northern Ireland: Is Religion actually Ethnicity in Disguise?" *Democratization* 20, no. 5: 939–58. doi: 10.1080/13510347.2013.801259 <https://www.tandfonline.com/doi/abs/10.1080/13510347.2013.801259>.

76. Craig, James. 1934. *Northern Ireland House of Commons*, Vol. XVII, Cols. 72–73 <https://cain.ulster.ac.uk/issues/discrimination/quotes.htm>.

deteriorating security situation further alienated the local Catholic community. There was also a resurgence in recruitment to the Irish Republican Army (IRA), a violent nationalist group.[77] In 1972, the Government of Northern Ireland resigned. Northern Ireland then came under direct rule from Westminster. This governance arrangement persisted until the reaching of the peace agreement in 1998, with the exception of a failed, devolved power-sharing agreement in 1973. During this period the IRA focused its violent campaign on the security forces and other representations of the British state, though it also injured and killed hundreds of civilians, primarily in Northern Ireland but also in mainland Britain. The British state adopted a security response, including using draconian policing powers, and Protestant paramilitary groups emerged to "defend" their community against the IRA.[78]

Despite the failure of the 1973 power-sharing agreement from 1980s initiatives and preparatory talks between various stakeholders began to set the stage for a possible agreement. In 1985 the British and Irish governments signed the Anglo-Irish Agreement, which importantly recognized the Irish government's advisory role in the governance of Northern Ireland. Despite initial unionist and extreme nationalist opposition, there were signs of political movement. By 1993, Anglo-Irish cooperation had increased and in December, the two governments produced the Downing Street Declaration, setting out their vision for securing peace. Against this backdrop of political progress, in 1994 the IRA announced a cessation of military violence. The peace process was gaining momentum and in early 1995 the British and Irish governments agreed a joint framework document. This document agreed further principles regarding the shape of a future settlement, including providing for cross-border institutions and the possibility of Irish constitutional change to remove a claim to Northern Ireland.

Who was included in the peace process?

Progress was hampered by disagreement over whether IRA disarmament must precede the entry of its political wing, Sinn Féin, into political negotiations and by the weakness of John Major's Conservative government. As time went by it became clear that the issue of disarmament could not be resolved. The solution that was found to this impasse was to decouple the issues of IRA disarmament and political negotiations. This was achieved by delegating the responsibility for disarmament to a third party. In November 1995, the International Body on Decommissioning (IBD) was formed. It comprised former American Senator George Mitchell, the Canadian General John de Chastelain, and former Finnish Prime Minister Harri Holkeri. The IBD suggested parallel disarmament but this was unpopular with Major (and unionists). So instead, Major focused on one of the more minor recommendations

77. English, Richard. 2004. *Armed Struggle: The History of the IRA*. Oxford: Oxford University Press <https://global.oup.com/ushe/product/armed-struggle-9780195177534>.

78. Walsh, Dawn. 2018. *Territorial Self-Government as a Conflict Management Tool*. Basingstoke, UK: Palgrave Macmillan <https://www.palgrave.com/gp/book/9783319772332>.

in the IBD's report and called for elections to select representatives to multiparty peace talks. On May 30, 1996, elections were held in Northern Ireland to choose who would participate in the peace talks. Eighteen constituencies elected five representatives from closed-party lists using the d'Hondt formula. In addition, each of the 10 parties with the most votes across Northern Ireland elected another two representatives.

The holding of these elections was met with extreme hostility by the republican movement, who viewed it as a cynical move by a British government not prepared to negotiate, and in February 1996 the IRA broke its ceasefire by exploding a bomb in London's docklands. The peace process appeared to be backsliding. Fortunately, the election of new governments, in Britain and Ireland in May and June 1997, respectively, saw a renewed determination by the governments to work together to persuade the IRA to instigate a new ceasefire and to move the peace process forward. The new governments announced that all-party talks would begin in September, to be completed by May 1998. Sinn Féin could participate in the talks if the IRA renewed its ceasefire, and disarmament was to be addressed separately and in parallel as had been suggested by the IBD. The IRA ceasefire was restored on July 19. This facilitated the entry of Sinn Féin into talks in September, but this was not without consequence—the Democratic Unionist Party (DUP) and United Kingdom Unionist Party (UKUP) left the talks in response.

Who were the mediators?

Having been first sent to Northern Ireland in 1995 as an economic envoy by President Bill Clinton and chairing the IBD, Mitchell was asked by the British and Irish governments to chair the peace talks. Mitchell's appointment was initially met with suspicion by the unionist parties, who viewed him as too close to Irish America and thus potentially favoring an Irish-nationalist position. However, these fears were dispelled, and he gained the parties respect due to his skills as a mediator. There was no guarantee that the talks that took place in the seven-month period from September 1997 to April 1998 would result in an agreement. The process of negotiations was hindered by the Ulster Unionists unwilling to engage in face-to-face talks with Sinn Féin. Mitchell was forced to facilitate shuttling between the delegations. Against this background, it is not surprising that progress was slow and that the negotiations only became focused as a Mitchell-imposed deadline loomed in April 1998. Mitchell as chairman instilled confidence in the process and he focused the parties on the need to compromise.[79]

79. Rafter, Kevin. 2008. "George Mitchell and the Role of the Peace Talks Chairman." *The Irish Review* 48, (Spring): 13–21 <https://www.jstor.org/stable/29736367>.

What was the agreement?

Governance Structures

The GFA provides for regional autonomy. It allows for a new Assembly at Stormont with 108 members.[80] This Assembly has full legislative and executive powers in relation to the "transferred matters," mainly in the social and economic field. There are also "reserved matters," which the Assembly can legislate on with various consents, and "excepted powers," such as foreign and defense policy which remain the exclusive responsibility of the Westminster parliament. In the Northern Ireland system, membership of the Executive is not on the basis of voluntary agreement. It is determined by the d'Hondt mathematical formula, based on the number of seats a party wins in the Assembly election. Furthermore, motions before the Assembly may be subject to a "Petition of Concern," a notice signed by at least 30 members of the Assembly and presented to the Speaker. Where such petitions are applied, the vote will require cross-community support.[81] The devolution of these powers to Belfast does not represent the granting of the central conflict parties self-rule, separate from each other. Rather, it instigates a governance arrangement in which these parties govern together in many areas, autonomous from central government in Westminster.

In an effort to ensure the proportional representation of the two main communities, nationalist and unionist, in the Stormont Assembly, it is elected by the proportional representation Single Transferable Vote electoral system using 18 constituencies.[82] An Executive is formed using the d'Hondt formula, which provides political parties with a choice of department depending on their electoral performance. The Executive is led by a First and Deputy First Minister who are elected on a cross-community basis.[83] Key decisions requiring cross-community support are to be

designated in advance, including election of the Chair of the Assembly and budget allocations. In other cases, such decisions could be triggered by a petition of concern brought by a significant minority of Assembly members (30/108).[84]

80. Though this was reduced to 90 MLAs in 2016.

81. This is a special voting procedure that ensures the support of both unionists and nationalists. This can be achieved by parallel consent (the support of over 50 percent of all those voting, including over 50 percent of both designated nationalists and designated unionists) or by weighted majority, which requires the support of 60 percent of those voting, including 40 percent of designated nationalists and 40 percent of designated unionists.

82. Cox, Michael, Adrian Guelke, and Fiona Stephen. 2000. Eds., *A Farewell to Arms? From "Long War" to Long Peace in Northern Ireland*. Manchester, UK: Manchester University Press <https://manchesteruniversitypress.co.uk/9780719071157/>.

83. The St. Andrews Agreement changed the election procedure for the First and Deputy First Minister. The new procedure provides for a First Minister nominated by the largest party of the largest designation in the Assembly and a deputy First Minister nominated by the largest party of the second largest designation in the Assembly, thus still providing for cross-community representation as long as *nationalist* and *unionist* remain the main designation that parties in the Assembly chose to self-identify.

84. The Good Friday Agreement. 1998. <https://peacemaker.un.org/uk-ireland-good-friday98>.

As well as providing for new governance arrangements with Northern Ireland, the GFA also provides for new institutions to structure the relationship between Northern Ireland and Ireland (North-South) and institutional links between Ireland and the UK (East-West). The former includes provisions for a North-South Ministerial Council (NSMC) and cross-border implementation bodies. The accord states that a minimum of 12 subject areas will be identified for cooperation under the North-South Ministerial Council. This included the establishment of six implementation bodies: Food Safety, Foyle, Carlingford and Irish Lights Commission, Inland Waterways, Language—Irish and Ulster-Scots, Special EU Programmes, and Trade and Business Development. These bodies provide opportunities for cross-border cooperation, and many of these sectors are most appropriately managed on a cross-border basis, but they also hold symbolic value for nationalists providing a tangible connection to Dublin.

A British-Irish Council is included "to promote the harmonious and mutually beneficial development of the totality of relationships among the peoples of these islands"[85] allowing for the involvement of not only the governments in Belfast, Dublin, and London but also the devolved administrations in Edinburgh and Cardiff, and the representation from the Isle of Man and the Channel Islands. A British-Irish Intergovernmental Conference is also provided for to allow for direct bilateral cooperation between Dublin and London.[86]

Guarantees

The agreement's provisions were legislated for in the Northern Ireland Act 1998. This Act has been framed as a "constitution" for the region. However, in reality this guarantee is not as strong as one would expect from a constitutional provision. This is due to British parliamentary sovereignty, which allows the British government to change the Act through ordinary parliamentary procedures. Key international guarantees are provided in the agreement. The Irish government changed the Irish Constitution and the accord is institutionalised as an international treaty between the British and Irish governments.

As originally enacted in 1937, Article 2 of the Irish Constitution asserted that "the whole island of Ireland, its islands and the territorial seas" formed a single "national territory," while Article 3 asserted that the Oireachtas (Irish government) had a right "to exercise jurisdiction over the whole of that territory."[87] These Articles had little legal impact but were a source of constant fear and suspicion in the unionist community. The GFA required that Articles 2 and 3 of the Irish Constitution should be changed. The new Article 2 provides for the right of people born anywhere on

85. Ibid.

86. Ibid.

87. Bunreacht na hÉireann (The Constitution of Ireland) Articles 2 & 3 <https://www.constitution.ie/Documents/Bhunreacht_na_hEireann_web.pdf>.

the island to obtain Irish citizenship and expresses an affinity with people living abroad who have Irish ancestry. The new Article 3 replaced the territorial claim on Northern Ireland with a recognition that 'a United Ireland shall be brought about only by peaceful means with the consent of a majority of the people, democratically expressed, in both jurisdictions in the island'.[88] The GFA is also an international agreement between the UK and Ireland. This provides that any changes have to be agreed between both states.

Human rights provisions

The accord provides for the protection of human rights in the region. It establishes a new human rights commission that will monitor respect for human rights in the region, liaise with the Irish Human Rights Commission, and make proposals regarding a bill of rights for the region. It also sets out that the European Convention on Human Rights applies in the region and that neither the Assembly nor public bodies can infringe on the rights included in it. Specifically, it also outlines linguistic rights, including the need to respect linguistic diversity, committing to the promotion of the Irish language, and the provision of Irish language medium education.[89]

Security provisions

The agreement establishes "[A]n independent Commission will be established to make recommendations for future policing arrangements in Northern Ireland."[90] This provision was the result of incompatible views of the existing policing arrangements held by the two main communities that could not be resolved during the peace negotiations. The issue of policing has a long, controversial history in Northern Ireland. The Royal Ulster Constabulary, the police force from 1920 to 2001, never secured the support of the nationalist community, who viewed it as sectarian force charged with

imposing a status quo that discriminated against its members and that was a barrier to the fulfilment of its national ambition. Conversely, unionists largely saw it as the brave and last defense against terrorism.[91]

Similarly, there was no real agreement on the issue of IRA disarmament. Unionists demanded that the IRA disarm before Sinn Féin entered the new Executive. However, republicans rejected this position. As a result, the accord did not directly link inclusion in its proposed institutions to disarmament. Instead of specifying a starting date for decommissioning, it indicated that the process

88. The Good Friday Agreement. 1998. <https://peacemaker.un.org/uk-ireland-good-friday98>.

89. Ibid.

90. Ibid.

91. Walsh, Dawn. 2017. *Independent Commissions and Contentious Issues in Post-Good Friday Agreement Northern Ireland*. Basingstoke, UK: Palgrave Macmillan <https://www.palgrave.com/gp/book/9783319507712>.

should be completed within two years of the referenda (i.e., May 2000).[92] The British government in a letter to unionists stated that "it's our view the effect of the decommissioning section of the agreement, with decommissioning schemes coming into effect in June (1998), is that the process of decommissioning should begin straight away."[93] However, Sinn Féin viewed this letter as having no status.

Prisoners and transitional justice

The GFA committed both governments to establishing an accelerated release programme for "qualifying prisoners," i.e. those convicted of offences related to the conflict. Those associated with paramilitary organizations who breached ceasefires are not to benefit from this process. No amnesty provision is included for those who had committed conflict-related crimes but were not imprisoned for them. There are no transitional justice mechanisms included as it was too sensitive an issue on which to reach agreement. The accord recognises the suffering of victims and pledges support for them and organizations that seek to meet their needs.[94]

Possible constitutional change

The GFA stipulates that Northern Ireland will remain part of the United Kingdom unless the majority of the people in the region vote for unification with Ireland. If such a vote were to occur, the accord commits the British government to legislating for the change. The UK Secretary of State is empowered to organize the holding of a poll on the constitutional status if he/she feels it is likely that a majority would support such a proposition. Such a poll can only be held a maximum of once every seven years.[95]

Referendum

Each government committed to organizing a referendum on May 22, 1998. The British government was to organize a referendum in Northern Ireland asking voters, "Do you support the Agreement reached in the multiparty talks on Northern Ireland and set out in Command Paper 3883?" To be eligible to vote, a person had to be 18 or over on the day of the referendum, be a British, Irish, or Commonwealth citizen, and be resident at an address in Northern Ireland. Turnout was over 80 percent with just over 71 percent supporting the agreement. The Irish government organized a simultaneous referendum in Ireland that asked voters whether they support the changes to Articles Two and Three of the Irish Constitution, which were proposed in the agreement. Turnout was over 56 percent with more than 94 percent voting in favor of the changes.

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92. The Good Friday Agreement. 1998. <https://peacemaker.un.org/uk-ireland-good-friday98>.

93. Eamonn O'Kane (2007): Decommissioning and the Peace Process: Where Did It Come From and Why Did It Stay So Long?, *Irish Political Studies*, 22:1, 81-101 <https://www.tandfonline.com/doi/abs/10.1080/07907180601157398>.

94. The Good Friday Agreement. 1998. <https://peacemaker.un.org/uk-ireland-good-friday98>.

95. Ibid.

Monitoring implementation

Individual institutions established by the accord are permitted to take remedial action if difficulties in their operation arise, provided they do not affect other institutions or require changes to the agreement. In the latter case the governments, in consultation with the parties in the Assembly, are committed to resolving the difficulties in their respective jurisdictions. The two governments and the parties in the Assembly are also required to convene a conference four years after the agreement comes into effect, to review and report on its operation.[96]

Summary of Postconflict Implementation

Once the Agreement was endorsed in the two referendums, elections to the new Northern Ireland Assembly were organized in June 1998. The Ulster Unionist Party (UUP) and nationalist Social Democratic Labour Party (SDLP) emerged as the largest parties and UUP leader David Trimble and SDLP deputy leader Seamus Mallon were elected First and Deputy First Minister at the Assembly's first meeting. However, the UUP refused to form a devolved government until the IRA disarmed. At the end of November 1998, the Assembly finally met and nominated executive ministers, but because of the IRA's failure to disarm, it was suspended (for the first time) in February 1999 by Northern Ireland Secretary Peter Mandelson.

In May 2000 the UUP agreed a return to the Assembly and Executive. But in October, the Assembly was again suspended as power-sharing fell apart over allegations of an IRA spy ring gathering intelligence at Stormont (the building housing the new Assembly). In new Assembly elections at the end of November 2003, Ian Paisley's Democratic Unionist Party (DUP) emerged for the first time as the largest party and Sinn Féin became the largest nationalist party. In the summer of 2005, the IRA announced a formal end to its armed campaign and ordered its members to disarm. In October 2006, the British and Irish governments laid the foundations for a new devolution deal between the DUP and Sinn Féin. In 2007, new Assembly elections returned both the DUP and Sinn Féin with increased numbers of seats, and Ian Paisley became First Minister and Martin McGuinness was appointed Deputy First Minister.

In 2014 and 2015 devolved government again faced possible collapse over welfare reform rows between DUP and Sinn Féin. Crisis talks produced the Stormont House and Fresh Start Agreements, deals between the British and Irish governments and Northern Ireland's parties to find a way forward.

However, political developments in 2016 and 2017 led to another suspension of the Assembly and made it more difficult for the British and Irish governments to

96. Ibid.

work together to facilitate its re-establishment. In 2016 June allegations emerged of a multimillion-pound “cash for ash” scandal in relation to the Renewable Heat Incentive (RHI) eco-scheme. In January 2017, Martin McGuinness resigned as Deputy First Minister in protest at the DUP’s handling of the RHI scandal and the Assembly collapsed. At the end of June 2016, the UK had voted to leave the European Union. Northern Ireland voted to remain, although there are sharp community divisions, with nationalists overwhelmingly in favor of remaining a part of the EU but unionists voting to leave. This vote and subsequent Brexit negotiations increased tensions between the British and Irish governments, making it more difficult for them to cooperate to ensure the Assembly was restored. The Assembly remained suspended for three years. But in January 2020, with the intervention of the British and Irish governments, a new accord, “New Decade, New Approach” was concluded and the political institutions restored.

The COVID-19 crisis has illustrated the difficulties of having different regulatory regimes on one small island. Furthermore, political disagreement around the implementation of the Northern Ireland Protocol means that Brexit will continue to challenge the Northern Ireland peace process for the foreseeable future. It is proving extremely difficult to design arrangements that prevent both a land border on the island of Ireland, particularly unacceptable to nationalists, and a sea border in the Irish Sea, which is completely unacceptable to many unionists. Furthermore, the argument from some actors, including Sinn Féin, that in light of Brexit a referendum on a united Ireland should be carried out, has reignited the debate on the whether the constitutional position of Northern Ireland should change in the short-to-medium term. The relationship between the British and Irish governments, which was so central to the peace process, has also dramatically deteriorated as a result of the Brexit negotiations.

Case Study Authors

Dr. Chris Chaplin is a political anthropologist. He received his PhD from the Department of Sociology, University of Cambridge. Chris has lived in Indonesia for over seven years, and his research explores Islamic activism, social movements, and citizenship within the country. He is especially interested in investigating the relationship between global Islamic doctrines and local understandings of piety and social activism, and the ways in which this comes to influence national and religious identities.

Dr. Anna Dziedzic is a Global Academic Fellow and Associate Director of the Centre for Comparative and Public Law at the Faculty of Law, at The University of Hong Kong.

Professor Cheryl Saunders AO is a laureate professor emeritus at Melbourne Law School, President Emeritus of the International Association of Constitutional Law, a former President of the International Association of Centres for Federal Studies, a former President of the Administrative Review Council of Australia, and a senior technical advisor to the Constitution-Building Programme of International IDEA.

Dr. Steven Rood is Fellow-in-Residence and Board Member of Social Weather Stations in the Philippines, and Visiting Fellow at the Australian National University. From 1999 to 2017 he was The Asia Foundation's Country Representative for the Philippines and Pacific Island Nations, and also served on the International Contact Group (2009–2013) and Third Party Monitoring Team (2013–2017) in the negotiations between the Philippine Government and the Moro Islamic Liberation Front. Rood served as professor of Political Science at the University of the Philippines College Baguio from 1981 until joining The Asia Foundation in 1999. Rood is the author of a number of works on Filipino politics. His most recent publication is His most recent publication is *The Philippines: What Everyone Needs to Know®* (2019).

Dr. Dawn Walsh is an Assistant Professor in the School of Politics and International Relations and Director of the Institute for British-Irish Studies at University College Dublin. She was previously an Irish Research Council-Marie Curie Elevate postdoctoral fellow. Her research interests also include a wide range of conflict resolution and postconflict issues, including the creation of innovative institutions to manage conflict, the implementation of peace agreements, and the development of gender justice in a postconflict environment.