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AMERICAS' REGIONAL CONFERENCE ON SECESSION AND INTERNATIONAL LAW*

CONCLUSIONS AND RECOMMENDATIONS

1. The Participants in the Americas' Regional Conference on secession and international law ("Participants") met at Santa Clara University from 31st January to 2nd February 2001.
2. The Participants took note of the Summary of Proceedings adopted by the Preparatory meeting of the European Regional Conference on the subject, as well as the conclusions and recommendations of the Conference of independent legal experts from the CIS Member-States on "Problem of Self-determination and Secession in Contemporary International Law".

The Participants generally agreed that the following Conclusions and Recommendations should be taken into account when evaluating the legality and related issues regarding secession.

PRINCIPLES OF INTERNATIONAL LAW

3. The Participants agree that examination of the issue of secession should respect the principles of international law, as expressed in the Charter of the United Nations and the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXXV) of 1970). Special importance was attributed to certain provisions of the Declaration, as noted in the following paragraphs 4, 5, and 6.
4. According to the principle of self-determination "all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter".
5. It is clearly specified in the "safeguard clause" that "nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in

part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed, or color. "¹

6. With regard to respect for human rights and fundamental freedoms, it was noted that all States must fulfill in good faith their duty under the United Nations Charter to promote respect for and observance of human rights and fundamental freedoms. Non-discriminatory implementation of internationally-guaranteed human rights within a pluralistic democratic State allows individuals and peoples maximum freedom and support to fulfill their legitimate aspirations and achieve the self-actualization that is often the aim of secession. As stated in the Universal Declaration of Human Rights, human rights should be protected by the rule of law "if man is not to be compelled to have recourse, as a last resort to rebellion against tyranny and oppression. Internal self-determination or "good governance" is increasingly part of human rights guarantees. It includes the right freely to ensure their economic, social and cultural development.

SELF-DETERMINATION AND SECESSION

7. Self-determination and secession are two different concepts. Self-realization of a group and the maintenance of its identity do not necessarily require secession, but may be achieved through other means such as devolution of power, administrative and cultural autonomy, creation of local government, etc.
8. The issue of secession arises whenever a significant portion of the population of a given territory, being part of a State, expresses by

¹ Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, G.A. Res. 2625 (XXV), Annex, 25 UN GAOR, Supp. (No. 28), UN Dec. A/5217 (1970), at 121. Similar provision is included in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities (1992): "Nothing in the present declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of States." (Article 8, par. 4).

word or deed the wish to withdraw from the State and become a State in itself or become part of another State.

9. Self-determination and secession are exercised on behalf of and for the benefit of peoples, not territories. When secession occurs, existing administrative boundaries need not necessarily be maintained and should be altered, by mutual consent and without coercion, whenever to do so would best reflect the desires of the peoples concerned.
10. International law at present confers neither a right of unilateral secession, nor does it deny such a right.
11. Secession is legally possible in the following cases:
 - by mutual consent and agreement of all those concerned;
 - pursuant to the Constitution or laws of the State.
12. Where peoples are under colonial rule or illegal foreign occupation, decolonization resulting in independence is also legally possible, but the predominant view expressed was that this should not be designated as "secession".

NEW PROPOSALS TO BE CONSIDERED FOR IMPLEMENTATION

13. International law should recognize a remedial right to secession where the population of a territory is subjected to gross, discriminatory and continuing violations of fundamental human rights directed against the secessionist group, in particular the right of effective participation in government.
14. The Participants took note of possible moral or ethical justifications that might be advanced for secession in specific circumstances, such as to redress exploitation of one group by another or to preserve the existence of a culture. Such moral claims often may be addressed by autonomy, self-government or other means short of secession.
15. It was noted that article 21 of the Universal Declaration of human rights states that the will of the people should be the basis of the authority of government. The Participants expressed the view that the principle of subsidiarity, by devolving decision-making to the

smallest effective unit capable of resolving a social problem, promotes autonomy and self-government, thereby maximizing the exercise of self-determination locally, nationally, regionally and globally. The pursuit of this form of good government would usually preempt secessionist tendencies.

16. Peaceful advocacy of constitutional change, including advocacy of secession, is protected under international human rights law and should not be deemed unlawful or treasonous by a State. The State retains the right to respond appropriately and legally to any attempt to dismember the State by force or violence.
17. In order to diminish the likelihood of secessionist conflict, States should respect the rights of minorities and indigenous peoples. The Participants believed that the right of indigenous peoples to self-determination should be recognized under international law. These rights include broad rights of indigenous self-government and related powers, including control of natural resources, within the jurisdiction of the States in which indigenous peoples are found.
18. It was emphatically presented to the Conference that domestic and international tribunals, as well as sovereign and independent States and international organizations and conferences, confer onto the principle of democracy a role in the context of claims of secession coming under their jurisdiction. (Ms. Dahlitz formulation ?)

CONFLICT RESOLUTION

19. Peaceful methods and means should be used to settle the problems arising in relation to secession. The parties should negotiate in good faith and cooperate in seeking a solution to internal disputes. Regional and international institutions should facilitate such solutions. The existence of the institutions similar to the Office of the High Commissioner on National Minorities of the Organization for Security and Cooperation in Europe (OSCE), or the creation of a Conflict Prevention Center, should be considered as examples of institutions that may provide early resolution of potential secessionist conflicts. Such a Center might serve as a consultative body, evaluate information, analyze existing or possible potential for conflict and made recommendations.
20. Other individual suggestions included that the General Assembly should consider seeking advisory opinions from International

Court of Justice regarding secessionist claims whenever it is thought that such an opinion would help to clarify the legality of a remedial secessionist claim.

In the same vein, it was proposed that when remedial secession occurs, a United Nations Council for Self-determination or other suitable transitional authority could be designated to administer the new polity until the conditions for self-government and international recognition were met.

21. As specified by the 1949 Geneva Conventions and additional protocols of 1977, State and non-State belligerents alike are obliged to implement international humanitarian law in all cases where armed conflict occurs in connection with secessionist efforts. Where third party States, non-State entities and international organizations intervene militarily in secession related armed conflicts; they are also obliged to implement international humanitarian law. International humanitarian law applies during secession-related armed conflict regardless of the legal and political basis for those opposing or facilitating secession.

RECOMMENDATIONS FOR FUTURE APPRAISAL

22. The Participants recommend analyzing in-depth how international bodies can be given the mandate and can more effectively monitor situations, which may potentially lead to secessionist claims and conflicts.
23. The Participants also recommend that
 - a) the United Nations Human Rights Commission and Sub-Commission to undertake a study on the of the problem of secession and self-determination and make recommendations on this issue;
 - b) regional institutions develop instruments and mechanisms, such as those adopted under the auspices of the OSCE and the Council of Europe, in order to prevent conflict and to ensure the rights of all persons.