

# Sustaining Peace and Internal Self-Determination in the UN Perspective

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CRISTIANA CARLETTI, MAR 17 2020

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The new challenges to prevent, manage and find profitable exit-out solutions from contemporary civil conflicts have called on the International community and the United Nations (UN) system to provide for a renewed promotion of global peace and security for all peoples. Primary attention in this chapter is firstly put on exploring the new UN vision to cope with critical challenges descending from complex preventive, contextual and post-conflict situations and to improve local knowledge to deal with root causes of conflict towards permanent positive peace and development opportunities. To this purpose the United Nations has recently promoted the new concept of 'sustaining peace' as introduced by both the Report of the Advisory Group of Experts for the 2015 Review of the UN Peacebuilding Architecture and the Report of the High-Level Independent Panel on UN Peace Operations. Its meaning was translated into the UN Security Council (UNSC) and UN General Assembly (UNGA) Resolutions adopted in 2016 (S/RES/2282; A/RES/70/262). According to this relevant approach, also endorsed by the UN Secretary-General (UNSG) (A/72/707-S/2018/43), it is evident that peace and security, human rights and development are interlinked and mutually reinforcing, and that this interlinkage is a profitable means to confirm the crucial importance of self-determination as a key-component of the post-intrastate conflict environment.

Secondly, the relevance of the internal pattern of self-determination is explored. The codification of the right to self-determination in the UN Charter, its legal assertion in the International Human Rights Covenants as well as in the 1960 UN General Assembly Declaration on the Granting of Independence to Colonial Countries and Peoples has extended the legal contents of self-determination by the UN system as a whole. This has steered for the inclusion of the right to take part in public affairs, to have access to the public service of one's own country, to determine a political status and to freely pursue economic, social and cultural development. In last decades the UN has strongly favoured the recognition and implementation of the internal component of the right to self-determination (Pomerance 1982; Rosas 1993; Salmon 1993; Kirgis 1994; Klabbers 2006; Saul 2011a and 2011b; Summers 2013; Demir 2017). This occurred particularly when the UN involved local actors to make the peace process more legitimate and sustainable. Internal self-determination as local ownership should infer the UN intervention for sustaining peace (Donais 2009, 2012; Saul 2011a and 2011b). This impacts the assessment of national needs and capacities, the nature of the country's legal system, the will of concerned parties and – to overcome intra-state crisis – the facilitation of a country-owned and country-led exit built upon the effective use of local capacities and institutions. But in recent times a new interpretation of the principle of self-determination, the so called hybrid self-determination (Richmond 2009; Weller 2009; Mac Ginty 2010; Senaratne 2013; Bell 2016), has been investigated due to its proved relevance in overcoming past failures and to redefine a new constitutional setting along the lines of the peace agreement's contents.

In the last part of the chapter an alternative reading of the set of peace agreement models that entered into force from 2000 to 2018 is proposed to investigate the feasibility of hybrid self-determination and its ability to strengthen the internal component of this principle as a core target of the post-conflict sustaining peace process promoted and guided under UN leadership. Analysis of some specific provisions of selected peace agreements already in force and

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the role of the UN in facilitating their negotiation and helpful implementation is provided to demonstrate how much the internal self-determination/hybrid self-determination component could positively influence post-conflict sustaining peace- and nation-building processes.

## **The Concept of Sustaining Peace: A New UN Approach to Dealing with Conflict Issues**

The issue of conflict in the 21<sup>st</sup> century is a complex matter. The common root causes that typified the most part of civil wars in the late 1990s and that were identified also since the beginning of the present century are represented by fragile institutional settings (Hannum 1990; O'Connell 1992; Werner 2001; Paris 2004).

Partially unexpected contingency of dynamics has played a significant role in adding more complexity to contemporary conflicts, thus contributing to a higher fragmented idea of traditional drivers and of a right approach to positively deal with them. This has incentivised emerging forms of violence and extremism (Chen 1991; Chadwick 1996; Hilpold 2017) as well as new populist movements which aimed at excluding ethnic, religious and cultural minorities to be politically treated and controlled, avoiding any form of revenge for joint public governance. These minorities have further suffered from a concrete marginalisation from access to and exploitation of economic and environmental resources (Thornberry 1989, 1993; Hannum 1991; Green 1995). A higher percentage of domestic conflicts and related relapses have been produced by weak administration of public resources such as land and water, which puts at risk the stability of the concerned areas and becomes a strong factor in regional and local conflicts. Further, the high-level involvement of vulnerable and disadvantaged peoples in criminal activity has translated into intractable rebel movements (Tomuschat 1992; Quinn 2007; Summers 2007; Sriram 2008). The emergency has become a permanent out-of-law setting where the absence of a robust and credible institutional actor has undermined the traditional concept of state sovereignty at the core of the international legal order.

This has prompted reflection on the relevance of international players, the UN system in particular being confronted with the critical ability of national authorities to prevent and, if it is the case, to manage the new features of contemporary conflicts. Following the collapse or prolonged absence of a central government in a failed state, the traditional international system has also considered the opportunity to assume a different position (Lund 2003; Tschirgi 2004; Chetail 2009). In this context the UN has tried to adapt its original statutory mandate into 'sustaining peace', so far expanding it to become flexible enough to encompass the promotion and protection of human rights. This has supported the principle of self-determination to be considered as an essential prerequisite to prevent and manage contemporary conflicts.

## **From the UN Agenda for Peace to the Reform of the UN Peacebuilding Architecture**

Since the first revision of the UN approach to deal with international peace and security at the beginning of the 1990s, as illustrated by the UNSG in 1992 in its *Agenda for Peace* (A/47/277- S/24111), progressive deterioration of nation-state contexts was tackled through the establishment and the gradual improvement of the following three entities: the Peacebuilding Commission (PBC), the Peacebuilding Fund and the Peacebuilding Support Office.

A different operational approach was provided in the *Supplement to an Agenda*, adopted in 2001 by the UNSC (S/PRST/2001/5), where peacebuilding was considered a relevant complement to the first two UN actions, and followed by the creation of the UNSG Advisory Group of Experts on the 2015 Review of the United Nations Peacebuilding Architecture (A/69/968-S/2015/490; A/64/868 – S/2020/393). This intervention has been aimed at giving tailored assistance to prevent and solve intra-state conflicts, i.e. to sustaining peace with the active participation of populations directly affected by intra-state conflicts as a one-off precondition (Bell 2017a and 2017b).

## **The UN 'Sustaining Peace' Approach: The Conceptual Analysis and its Operational Practicability**

The UN 'sustaining peace' approach is aimed at managing peace embracing prevention, handling exit out and post-conflict strategies. Sustaining peace means to restore dialogue and consultation with local communities, to rely on the credibility and support from public and private individuals and collective stakeholders, to frame new settings and to encompass critical root causes and dynamics that have contributed to fuel the conflict" (A/72/707-S/2018/43).

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The inclusive component of the 'sustaining peace' approach is based on the trust of national authorities and domestic actors' categories: minorities, representatives of vulnerable individuals, the private sector, civil society, under-represented groups or peoples. It has the 'broaden ownership' concept at its core: it means to ensure a high-intensity participatory approach from the first stage of the post-conflict process; at the same time it lets non-institutional counterparts give their contribution in the definition of policies, actions, programmes and projects, in the implementation of predetermined measures, and in the monitoring and evaluation of results, to avoid any form of re-collapse into the conflict (Brown and Grävingsholt 2011; de Coning 2016).

The 'sustaining peace' approach should ensure the active participation of peoples, also encompassing vulnerable individuals that are the most likely to be excluded from contributing to the creation of a positive post-conflict setting. From one side this has meant the reinforcement of the central role of the organisation in conveying the maximum engagement of international stakeholders and the taking of root causes, basic needs, dynamics of the country-situation into consideration. When the UN has not reserved specific attention to the principle of self-determination, only an in-depth preliminary analysis of all political and economic drivers has been proved as effective enough in the short, medium and long term. To this goal the UN Headquarters are requested to work in close cooperation with local bodies to perform the common tasks for consolidating peace in the exit-out strategies and in contributing to rebuild the nation-state moving from the self-determination vision. Particularly, the UNSG has played and plays nowadays a key role, directly or through his representatives, to get into contact and dialogue with national public and private stakeholders. The common aim has been to define a political roadmap in order to overcome emergency needs and to implement a series of cross-cutting measures impacting the three pillars of the organisation – i.e. international peace and security, development and human rights – to achieve concretely a 'sustaining peace'.

On the other side, the new UN approach has evidently resulted in adjusting the original peace operations' substantial and procedural fundamentals. The recent proposal of the High-Level Independent Panel on Peace Operations on this point has been based on the elaboration of a package of sequenced actions with few and clear priorities and operational tasks: they should all respond to primary needs of the affected population and their need to restart by its own self-determination.

The 'sustaining peace' approach will work also in a preventive perspective to avoid any form of short-term re-collapse into the conflict but also to update the guiding principles of the UN peace interventions. As reminded by the UNSG in his last report, conflict prevention and mediation are core-tools that must be re-prioritised to respond to the political and social dynamics of national and local communities at risk. This will lead to the primacy of political solutions in relation to existing or potential conflicts; indeed, political solutions have to be considered as a relevant and complementary tool in association with the military component of UN peace operations and apart from any direct link to the self-determination principle. In other words, the transition from peace-making to peacekeeping and peacebuilding calls primarily for a new and stronger partnership among all the national and international concerned stakeholders, preserving enough flexibility to deal with cross-cutting problems at the normative and operational level.

To sum up, investing in 'sustaining peace' encompasses the international and national actors' will to be fully committed for a long-term implementation of a peace agreement. This engagement goes along the lines of a virtuous cycle. It starts from preventing conflicts before their escalation; it passes through the management of violent conflicts by using political tools and achieving good compromises by mediation; and it is completed when good governance, rule of law, democracy, human rights protection and internal self-determination are really guaranteed in a positive peace setting.

## **Internal Self-Determination Impacting the Substantial Elements of Peace Agreements: For a New Challenging Peace Sustaining Vision**

The original legal definition of the principle of self-determination was strictly linked to the notion of the nation-state emerging in the 1960s decolonisation process. It was claimed by populations in order to change their status of independence as well as to confirm the relevance of the concept of territorial integrity (Cassese 1981 and 1995; Tomuschat 1993; Koskeniemi 1994).

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Beyond this historical context the opportunity to expand the aforementioned principle by giving it a comprehensive legal relevance was endorsed by the UN system in the 1970s: in line with articles 1 and 2 of the UN Charter, the common article 1 of the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights provided that “all peoples have the right to self-determination [...] to freely determine their political status and freely pursue their economic, social and cultural development”.

On one side the chance for a wider interpretation was frustrated and limited to internal struggles against the former or new governmental authorities in order to achieve the full enjoyment of fundamental rights via a secessionist-based process (Moore 1998; Walter et al. 2014). On the other side the individual and collective commitment to accomplish self-government has required the cross-examination of the concept of territorial integrity; its application has been critically proved when it was related to secessionist claims from populations or minorities as relevant component of the same population (Crawford 2001).

To overcome these inconsistencies with the aim to highlight the internal component of the principle of self-determination, two proposals were formulated by the best doctrine which have a common background: the negotiation of peace agreements following an intra-state conflict, whereas the UN has often played a relevant and positive role also for the recognition and the concrete respect of the principle itself.

Firstly, the principle has been considered as a procedural right to be enjoyed by the peoples who have a high interest in participating in decision-making processes directly affecting them. This has encompassed not only the rights related to direct democracy in a post-conflict setting but also the regular participation in all decisions concerning the protection and promotion of civil, political, economic, social and cultural rights (Klabbers 2006).

Subsequently, a different meaning of the principle of sovereignty has been used to confirm the internal legitimacy and the external independence of a nation-state. As to the former, the development of international law has contributed for an advanced relevance of the principle of self-determination. It was defined as a core right to be fulfilled at the domestic level in favour of individuals and peoples. And it was envisaged as a core obligation imposed on governmental authorities: the duty to ensure the exercise of democratic rights; participation in electoral processes which freely determine the political status of the nation-state; the protection of minority rights; and the progressive accomplishment of economic, social and cultural rights. The latter observation deserves specific attention and should be explored in relation to positive peace, following negotiation and the entering into force of a peace agreement, in the view of avoiding a re-collapse into intra-state conflict and of promoting the new UN model of ‘sustaining peace’.

In general terms the peace agreement – embracing the different legal patterns of the cease-fire agreement, the framework agreement and the agreement for the implementation of legal commitments at the national level – is the tool that lets the institutional and non-institutional counterparts of a conflict compose their contrasts according to primary political, economic and social interests (Bell 2006; Carletti 2008).

There are three main stages where the principle of self-determination could emerge and be treated in order to contribute to a lasting peace (Bell 2008). At the first stage, the aim is to redefine the nation-state setting: it means to give new emphasis to the legitimacy of the governmental system at the central and local levels as well as to amend or include key constitutional principles for its functioning – i.e. democracy, rule of law, human rights, inclusiveness and participation in decision-making processes (Aroussi and Vanderginste 2013; Kaldor 2016). Then, according to the principle of territorial integrity and full sovereignty of the nation-state, a complete institutional framework should be built into central governance bodies and mechanisms and disaggregated territorial powers. The latter are useful to take into account the demand for participation from those ones vindicating the self-determination principle within a non-violent power disaggregation process (McWhinney 2007). The third stage is represented by the recognition of an external support: it is represented by the external power temporarily dislocated from the national territory to uphold the ‘sustaining peace’ process and to reinforce the linkage between the renewed legitimate institutional setting and the population in the implementation of the peace agreement (Barnett and Zürcher 2009; Chandler 2015).

This approach, as mentioned above could be extremely relevant to avoid any secessionist movement. This fear could be managed only if the international presence in domestic governance management is really temporary and if it is

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aimed at accommodating the different but complementary interests of the groups composing the entire population. So far, the exercise of national sovereignty is not completely ascribed to one internal or external power but is shared between them. It is dislocated to facilitate the relationship among political and social competitors and it might offer a new interpretation of the principle of self-determination (so called 'hybrid self-determination') to overcome past failures and to redefine a new constitutional setting along the lines of the peace agreement's contents (Boege et al. 2008; Mac Ginty 2010 and 2011; Mac Ginty and Richmond 2015).

## **The Hybrid Self-Determination: Substantial and Procedural Features**

The hybrid self-determination concept moves from the need to translate its international content into a constitutionalising process to endorse the peace agreements provisions at the post-conflict domestic level (Bell and Zulueta-Fuelscher 2016). The success of this process is driven by the full recognition of the aforementioned concept both in substantive and procedural terms and the UN contribution has proved to be nearly effective to this scope.

The substantial content is acknowledged as the right to an effective and fair participation to institutions and to public decision-making mechanisms. If the normative relevance of the principle of self-determination is out of the question at the international level and within the UN legal framework, the compromise between its core elements and the principle of territorial integrity and full sovereignty is yet questionable. It means that the principle, to be accepted and to support the revitalisation of the legitimacy of the constitutional power in a post-conflict situation, should be conceived as hybrid and facilitated by external actors – e.g. the UN – into the new domestic setting (Fox and Roth 2000). The latter are required to work to develop new internal legal standards consistent with international law (Kymlicka 2007; Knop 2008; Valadez 2018). In this sense the hybridity is considered not an obstacle but a driver substantially – and also linguistically – apt to reconcile opposing visions and interests into a composite and appreciable nation-state setting. Indeed, it grants representation and participation as a precondition of the relationship between the government and its population. In other terms, hybridity impacts a common legal standards baseline that is strong and weak at the same time. Under UN leadership the constitutional contents have been included in the peace agreement so as to overcome negative violent reactions from populations; at the same time the institutional framework has been soft-contractualised as the optimal solution for the entire community (Sapiano et al. 2016).

The last observation reminds of the procedural component of the concept that is enshrined in the right to freely express opinions and be seriously heard in the negotiation of the peace agreement and its full implementation. Though the UN is tentative in granting this precondition throughout the post-conflict process, it is a matter of fact that the procedural component has a complex and dynamic feature. The fair and active participation for the redefinition of the nation-state, the disaggregation and the dislocation of power appear as a proper right: it should be completed by the definition of a multiple set of governance issues to be negotiated and implemented at the national level – i.e. power levels, reform of the judiciary, management of the military and police forces, human rights domestic machinery. These institutional arrangements are quite relevant per se but not enough valid in their own substance. The hybridity of self-determination is also a dynamic process that should be tested regularly and, if it is the case, to be amended to ensure the political and social inclusiveness of populations in legitimating the institutional powers. In other terms hybridity is placed among the notions of representative and participatory democracy: the first is certified by the strong but circumstanced relation between governmental bodies and their electors; the latter is enshrined in the exercise of the citizenry, in its high qualitative level and in the preservation of a factual inclusiveness into the governance system as a whole beyond the electoral process. Really power-sharing principles and mechanisms for joint governance responsibility let the peace agreement inform the constitutionalising process based on an equal and fair recognition of individual and collective participatory rights.

## **Peace Agreement Models Including Hybrid Self-determination as a Core Target of the Post-conflict Sustaining Peace Process**

An alternative reading of the set of peace agreement models that entered into force from 2000 to 2018 is here proposed to investigate the feasibility of the hybrid self-determination and its impact to strengthen the internal component as a core target of the post-conflict sustaining peace process (Melandri 2015). At the same time the role

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and action of the UN in the cases reported below could confirm the relevance of this target, as endorsed, to positively and concretely help concerned countries deal with the criticalities arising from the post-conflict setting.

As it concerns intra-state conflicts aimed at claiming secessionist targets hybrid self-determination has led to the following three results: the establishment of a new state identity; the recognition of groups previously excluded from democratic participation; a constitutional and institutional reform encompassing basic standards of representative and participatory democracy. At the same time the disaggregation of powers has entailed autonomous solutions, granting a higher level of protection of human rights, equality rights and political and social inclusiveness. Finally, the dislocation of powers has deserved a temporary contribution from international actors, with a gradual governance devolution and the decision to postpone territorial integrity and constitutional setting solutions at a later stage. One example could be mentioned in such contexts – the Papua New Guinea Bougainville Peace Agreement (S/2001/988).

In Papua New Guinea the hybrid nature of the principle of self-determination has been introduced since the adoption of the draft basic agreement of 24 December 1998. The agreement aimed at establishing the new governmental framework moving from the formal recognition of the self-determination principle in a proper act – in this case a resolution was explicitly mentioned – in order to regulate the matter and the manner for implementing it. At the same time the hybridity was encompassed by the availability of options that could be adopted in view of ‘developing a peaceful outcome to the negotiations’. Indeed in the following step pursuing the drafting and formal approval of the Bougainville Peace Agreement, on 30 August 2001, a mutual compromise was introduced: it reflected the hybrid idea of self-determination, as endorsed in the autonomy objectives jointly accepted by the contracting parties – i.e. the National Government and the Bougainville Government. Assuming the sovereignty of Papua New Guinea, the arrangements provided by the aforementioned Peace Agreement confirm the Bougainville identity but the promotion of fruitful relationships with ‘the rest of Papua New Guinea’. Moreover a multifaceted purpose (S/2001/988) was pursued to gain a double and mutually effective approach for both contracting parties: to recognise their formal and functional roles and to work together to achieve the same objective, i.e. the unity and prosperity of Papua New Guinea (Peace Agreement Access Tool 1998).

The UN’s helpful and coherent intervention in Papua New Guinea has had a twofold objective which reminds of the proper hybrid nature of the self-determination principle. From one side the reinforcement of the inclusive approach was pursued in relation to governmental authorities and civil society representatives in order to improve a democratic, transparent and accountable governance. On the other side a targeted assistance to local authorities of the Autonomous Region of Bougainville was sought. This meant to prevent any form of violence attempting the political, economic and social security and personal safety of peoples, and to support the local parliament in facilitating the exchange of information, and active participation of the people of Bougainville towards the next referendum, scheduled for 2019.

In relation to solutions for intra-state conflicts grounded on historical ethnic struggles, the opportunity for a re-definition of the status of the nation-state is introduced. This tentative was explored by referring to multiple factors enabling alternative solutions inspired by the utmost inclusive approach of minorities. Among the most relevant factors, the following are worth mentioning; full recognition of their fundamental rights, respect of the principle of equality, promotion of dialogue and mutual understanding, reinforcement of democracy, rule of law and good governance. The power has been disaggregated providing for concrete and balanced institutional participation at the central and local levels. The dislocation of power has been granted through a progressive translation of competences from international to domestic bodies. This has meant to negotiate firstly a cease-fire agreement; then to promote a process aimed at ensuring the gradual establishment of a constitutional and legislative framework under the monitoring of international observers; and finally the compilation of a definitive constitutional text to be confirmed by referendum as the precondition for democratic elections. In such contexts the hybrid self-determination has been put at risk to be partially accomplished, due to the predominant transitional setting waiting for an agreed consolidated alternative from all the contenders (Bell and Pospisil 2017). A relevant example of Sri Lanka could be mentioned in this scope.

Here the hybrid nature of the self-determination principle emerged during peace talks carried out by the Government

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of Sri Lanka and the Liberation Tigers of Tamil Eelam. On the occasion of the release of the Oslo Communiqué on 5 December 2002 the need to explore a balanced solution was reported. It encompassed the internal self-determination as well as the establishment of a governance federal option within a united country. In the following debate promoted in 2003 concerning the human rights component – to be safeguarded as a key factor for the success of the peace process – the principle was reaffirmed as the precondition for the enjoyment of collective rights. In the last stage, i.e. the Agreed Statement adopted by the parties on 21 March 2003, internal self-determination was considered the core prerequisite to the development of a federal system ‘within a united, federal Sri Lanka’ by introducing the preliminary organic setting to launch and manage this process (Peace Agreement Access Tool 2002; Peace Agreement Access Tool 2003a; Peace Agreement Access Tool 2003b).

The achievement of a condition of positive peace within the country has facilitated the UN action to sustain the National Unity Government in the peacebuilding and national reconciliation process launched in 2009. A concrete support was particularly ensured in 2015 through financial support granted by the UN Peacebuilding Support Office (by the so called Peacebuilding Fund – Peacebuilding and Recovery Facility); also the release of technical assistance in developing a Peacebuilding Priority Plan was provided, anticipated by an ad hoc assessment and based on four priority areas: Transitional Justice, Reconciliation, Good Governance, and Resettlement and Durable Solutions. The Plan was finalised in close consultation with civil society in June 2016 for a three year cycle. UN assistance concerning the good governance area was inspired by the hybridity of the self-determination principle for the accomplishment of a ‘political solution’. It encompassed the opportunity for a merged territorial unit covering the Northern and Eastern Provinces of the country – where reluctant Muslim and Sinhalese communities lived – and the extended self-administration, through the power devolution in favour of the Tamil people. This approach, which could be considered as having had a positive impact until now, is under implementation to avoid any relapse into ethnic conflict and to catch the present challenges for going forward.

Intra-state conflicts, which are basically characterised to replace institutional authoritarian systems and are partially intended to stress the relevance of the principle of self-determination, claim the need to reaffirm the nation-state’s key values and democratic standards. As for the redefinition of the state, a comprehensive renewed commitment to the protection of human rights, inclusiveness and democratic accountability is the prerequisite for a stronger linkage between institutions and peoples to reinforce the sovereign legitimacy of the former over the latter. The disaggregation of powers is represented by the reconfiguration of the political parties’ setting: it involves all contenders – former military parties and civil society organisations – in democratic elections as well as in participatory decision-making processes other than the electoral ones. The power has been also dislocated in favour of international actors that were requested to facilitate the best implementation of peace agreements.

The most exemplificative case is the one of Nepal. Here the agreement reached between the Government Talks Team, including the basic Seven Political Parties, and the Federal Limbuwan State Council, signed on 19 March 2008, was based upon a balanced compromise to avoid any form of government inspired by feudalist and strongly centralised patterns and to involve all peoples for a unitary state model well beyond the original demand for a Limbuwan Autonomous State. This encompassed a common state rebuilding commitment ‘along with the right to self-determination’, joined with the ‘right to ethnic identity and autonomy’, according to the former historical context and the will of creating a ‘peaceful, prosperous and modern new Nepal’. So far the hybrid self-determination rested on the intention to establish a federal democratic republic – the so called ‘national mainstreaming’ – and to preserve the ethnical components and the respective autonomies of the Nepalese peoples (Agreement Reached between the Government Talks Team comprising Seven Political Parties and the Federal Limbuwan State Council 2008).

To achieve this objective the UN established in 2007 the United Nations Mission in Nepal (UNMIN), with a progressively renewed, peculiarly light military mandate to monitor and assess the implementation of the peace agreement in the political and governance perspective. The risk of deterioration of the situation and reiterated tensions led UNMIN to support the conflicting parties: on 13 September 2010 the Nepalese Government and the UCPN-Maoist party signed a new agreement in which they pledged to take up the remaining tasks of the peace process to complete them by 14 January 2011. It is a matter of fact that the preliminary and latter results from the UN contribution clearly diverge as for the peace process. Different analytical positions were expressed about the successful UN assistance for the stabilisation of the domestic framework and the relevance of the principle of hybrid

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self-determination, for the implementation of peacebuilding activities and in the view of preventing any re-collapse into the war. The UN intervention was probably inspired by the tentative of hybridisation of the principle of self-determination; the UN took into account the institutional centralisation and the exclusion of local powers for multiple and complementary root causes such as caste, ethnicity, religion, gender. However, the international early military and political engagement was shifted into a lower-intensity capacity to facilitate the dialogue among conflicting parties: this left ultimately to local power the control over the peace consolidation towards a federalist solution. This means that the hybrid self-determination principle whenever managed by local elites, marginally supported by international actors, could turn into new tensions and violence. This occurred firstly in 2013 with the dissolution of the Constituent Assembly, then with heavy protests recorded since September 2015 against the constitution-making process. Finally, with an ongoing silent opposition by the Joint Democratic Madhesi Front was recorded for a federalist option which is embedded in the broader institutional reform process and that could fuel the discriminatory component of the forthcoming governance system.

## Some Concluding Observations

The inclusion of the principle of hybrid self-determination in peace agreements could be a relevant tool to support the new UN 'sustaining peace' model. As proposed by the best doctrine before the launch of the UN revitalisation of the peace-building architecture, there are four nuanced outcomes to this scope (Bell 2008).

Within a potential first setting the peace law could be used to provide for an alternative and creative solution: it could be based on a 'disaggregation of concepts of statehood, territory, peoples and nationalities' that inform the ongoing process of defining the relationship among international legal order, statehood, nationhood, principles of self-determination, territorial integrity and sovereignty. This background gives the peace agreement a transitional and constitutional value to resume all the claims of contenders in a 'complex multinational post-sovereign state'. In this framework the UN leadership could positively contribute to this scope through the reinforcement of the legal framework and the empowerment of the participatory approach, as occurred in some circumstances in previous years.

In a more creative manner peace agreements including the hybrid self-determination component could be considered as the right tool to cope with co-factors that had led to the complete dysfunctionality of the state. Here the constitutional requirements enshrined in the peace agreement are used to move from the international legal order towards the rebuilding of nationhood, ensuring a full engagement of all the contenders. Within this context the UN could only play a strong but preliminary role; the organisation leaves the pave for a proper translation of the principle under reference into the new domestic legal framework, avoiding a useless and counterproductive perpetuity of its presence on the field.

The impact of peace agreements including a hybrid self-determination component could be evaluated in a stricter manner, taking into consideration only the immediate results of the transitional process to liberal democracy. Here to hybridity entails a partial short-time result represented by the reinforcement of human rights protections and the planning and performing of elections. This preliminary outcome is remarked as an expected technical result to be forcibly completed by further steps in the transitional process leading the international legal order to be superseded by the domestic constitutional order. Along this line it could only be demanded that the UN monitor the full respect of international human rights law and recommend its implementation by nation-building actors.

The last option to use the peace agreement including a hybrid self-determination component is the most conservative. Due to existing and not yet solved conflicts between contenders, the real impact of the peace agreement is limited. Neither could it support the transitional powers process – maintained by the older governmental authorities – nor could it provide for a comprehensive transformation of the statehood which responds to the basics of liberal democracy. Along these circumstances the same substantial and formal features of peace agreements are not fluid and flexible enough to encourage a positive transitional process. The narrative could only lead to review of the institutional setting without a real contribution from below. The UN has experienced several cases where its contribution has not enabled the contenders to really exit out from the conflict. There is also, however, a worst-case scenario: the preservation of the older statehood. It could mean that the provisions of the peace agreement are so



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hybrid to induce to destroy the self-determination concept and to facilitate the adoption of a new imperialist set of policies and practices. In other terms the institutional setting is not only preserved but also aims to grant less independence and less equality and to strengthen the exclusion of the underrepresented who fight for the creation of a new liberalist nationhood framework. These are the cases where the UN has been mostly criticised for the powerlessness to hold its statutory mandate and the inactivity to prevent, restore and maintain international peace and security. Critics have been summarised in pushing for a comprehensive reform of the first pillar of the organisation in favour of the elaboration of the new concept of 'sustaining peace'.

All the above-mentioned options to read the peace agreement's hybrid self-determination component demonstrate how international and national actors could impact the establishment of a post-intrastate conflict environment domestically. In doing so to maintain international peace and security, to protect human rights and to promote human development, 'sustaining peace' could be properly guaranteed. For the UN this challenge could be considered a concrete tool for testing the need for a renewed reading of its role and mandate to tackle contemporary conflicts and to strengthen international human rights law and the principle of self-determination.

## References

Agreement Reached between the Government Talks Team comprising Seven Political Parties and the Federal Limbuwan State Council. 2008. In *From Conflict to Peace in Nepal: Peace Agreements 2005–10*, edited by Izumi Wakagawa, Prawash Gautam, and Anil Shrestha, 117–119. Kathmandu: Asian Study Center for Peace & Conflict Transformation.

<https://www.peaceagreements.org/masterdocument/1751>.

Aroussi, Sahla and Stef Vandeginste. 2013. "When Interests Meet Norms: The Relevance of Human Rights for Peace and Power-Sharing." *The International Journal of Human Rights* 17: 183–203.

Barnett, Michael and Christoph Zürcher 2009. "The Peacebuilder's Contract: How External Statebuilding Reinforces Weak Statehood." In *The Dilemmas of Statebuilding: Confronting the Contradictions of Postwar Peace Operations*, edited by Roland Paris and Timothy D. Sisk, 25–32. New York: Routledge.

Bell, Christine. 2006. "Peace Agreements: Their Nature and Legal Status." *American Journal of International Law* 100: 373–412.

Bell, Christine. 2008. *On the Law of Peace. Peace Agreements and the Lex Pacificatoria*. Oxford: Oxford University Press.

Bell, Christine. 2016. "Political Settlement and the New Logic of Hybrid Self-determination." In *New Logics in the Relations of Legal Orders*, edited by H. Patrick Glenn and Lionel D. Smith, 129–161. Cambridge: Cambridge University Press.

Bell, Christine. 2017a. "Introduction: Bargaining on constitutions – Political settlements and constitutional state-building." *Global Constitutionalism* 6: 13–32.

Bell, Christine. 2017b. "Peace settlements and Human Rights: A Post Cold-War circular history." *Journal of Human Rights Practice* 9: 358–378.

Bell, Christine and Kimana Zulueta-Fuelscher. 2016. *Sequencing Peace Agreements and Constitutions in the Political Settlement Process*. Stockholm: International Institute for Democracy and Electoral Assistance.

Bell, Christine and Jan Pospisil. 2017. "Navigating inclusion in transitions from conflict: The formalised political unsettlement." *Journal of International Development* 29: 576–593.

# Sustaining Peace and Internal Self-Determination in the UN Perspective

Written by Cristiana Carletti

Boege, Volker, Anne Brown, Kevin Clements, and Anna Nolan. 2008. "On Hybrid Political Orders and Emerging States: State Formation in the Context of 'Fragility'". *Handbook Dialogue* 8, 2–21. Berlin: Berghof Foundation.

[https://www.berghof-foundation.org/fileadmin/redaktion/Publications/Handbook/Articles/boege\\_etal\\_handbook.pdf](https://www.berghof-foundation.org/fileadmin/redaktion/Publications/Handbook/Articles/boege_etal_handbook.pdf).

Brown, Stephen and Jörn Grävingholt. 2011. *From Power Struggles to Sustainable Peace: Understanding Political Settlements*. Paris: Organisation for Economic Co-operation and Development (OECD).

Carletti, Cristiana. 2008. *Gli accordi di pacificazione nel diritto internazionale*. Torino: Giappichelli Editore.

Cassese, Antonio 1981. "The Self-Determination of Peoples." In *The International Bill of Rights*, edited by Louis Henkin, 92–113. New York: Columbia University Press.

Cassese, Antonio. 1995. *Self-Determination of Peoples: A Legal Reappraisal*. Cambridge: Cambridge University Press.

Chadwick, Elizabeth. 1996. *Self-Determination, Terrorism, and the International Humanitarian Law of Armed Conflict*. The Hague: Martinus Nijhoff Publishers.

Chandler, David. 2015. "Reconceptualizing international intervention: statebuilding, 'organic processes' and the limits of causal knowledge." *Journal of Intervention and Statebuilding* 9: 70–88.

Chen, Lung-Chu. 1991. "Self-Determination and World Public Order." *Notre Dame Law Review* 66: 1287–1297.

Chetail, Vincent. 2009. *Post-Conflict Peacebuilding: A Lexicon*. Oxford: Oxford University Press.

Crawford, James. 2001. "The Right of Self-Determination in International Law: Its Development and Future." In *People's Rights*, edited by Philip Alston, 7–68. Oxford: Oxford University Press.

de Coning, Cedric. 2016. "From peacebuilding to sustaining peace: implications of complexity for resilience and sustainability. Resilience: International Policies." *Practices and Discourses* 4: 166–181.

Demir, Ebru. 2017. "The right to internal self-determination in peacebuilding processes: a reinterpretation of the concept of local ownership from a legal perspective." *Age of Human Rights* 8: 18–48.

Donais, Timothy. 2009. "Inclusion or Exclusion? Local ownership and Security Sector Reform." *Studies in Social Justice* 3: 117–131.

Donais, Timothy. 2012. *Peacebuilding and Local Ownership: Post-conflict Consensus Building*. London: Routledge.

Fox, Gregory H. 1995. "Self-Determination in the Post-Cold War Era: A New Internal Focus?" *Michigan Journal of International Law* 16: 733–781.

Fox, Gregory H. and Brad R. Roth. 2000. *Democratic Governance and International Law*. Cambridge: Cambridge University Press.

General Assembly Resolution 47/277, *An Agenda for Peace: Preventive diplomacy, peacemaking and peace-keeping report of the Secretary General*, A/47/277- S/24111 (17 June 1992), available from <https://undocs.org/A/RES/47/277>.

General Assembly Resolution 70/262, *Review of the United Nations peacebuilding architecture*, A/RES/70/262 (27 April 2016), available from [undocs.org/en/A/RES/70/262](https://undocs.org/en/A/RES/70/262).

# Sustaining Peace and Internal Self-Determination in the UN Perspective

Written by Cristiana Carletti

- Green, Leslie. 1995. "Internal Minorities and their Rights." In *Group Rights*, edited by Judith Baker, 257–272. Toronto: University of Toronto Press.
- Hannum, Hurst. 1990. *Autonomy, Sovereignty, and Self-Determination. The Accommodation of Conflicting Rights*. Philadelphia: University of Pennsylvania Press.
- Hannum, Hurst. 1991. "Contemporary Developments in the International Protection of the Rights of Minorities." *Notre Dame Law Review* 66: 1431–1448.
- Hilpold, Peter. 2017. "Self-determination and Autonomy: Between Secession and Internal Self-determination." *International Journal on Minority and Group Rights* 24: 302–335.
- International Covenant on Civil and Political Rights*, New York, 19 December 1966, *United Nations Treaty Series*, vol. 999, p. 1-14668, available from <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>.
- International Covenant on Economic, Social and Cultural Rights*, New York, 19 December 1966, *United Nations Treaty Series*, vol. 993, p. 3, available from <https://treaties.un.org/doc/Publication/UNTS/Volume%20993/v993.pdf>.
- Kaldor, Mary. 2016. "How peace agreements undermine the rule of law in new war settings." *Global Policy* 7: 146–155.
- Kirgis, Frederic L. Jr. 1994. "Editorial Comment; The Degrees of Self-Determination in the United Nations Era." *American Journal of International Law* 88: 304–310.
- Klabbers, Jan. 2006. "The Right to be Taken Seriously: Self-determination in International Law." *Human Rights Quarterly* 28: 186–206.
- Knop, Karen. 2008. *Diversity and Self-Determination in International Law*. Cambridge: Cambridge University Press.
- Koskenniemi, Martti. 1994. "National Self-Determination Today: Problems of Legal Theory and Practice." *International and Comparative Law Quarterly* 43: 241–269.
- Kymlicka, Will. 2007. *Multicultural Odysseys: Navigating the New International Politics of Diversity*. Oxford: Oxford University Press.
- Lund, Michael. 2003. *What Kind of Peace is Being Built? Taking Stock of Post-Conflict Peacebuilding and Charting Future Directions*. A discussion paper. Ottawa: International Development Research Centre. <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.494.1386&rep=rep1&type=pdf>.
- Mac Ginty, Roger. 2010. "Hybrid Peace: The Interaction between Top-down and Bottom-up Peace." *Security Dialogue* 41: 391–412.
- Mac Ginty, Roger. 2011. *International Peacebuilding and Local Resistance: Hybrid Forms of Peace*. Basingstoke: Palgrave Macmillan.
- Mac Ginty, Roger and Oliver Richmond. 2015. "The fallacy of constructing hybrid political orders: a reappraisal of the hybrid turn in peacebuilding." *International Peacekeeping* 23: 219–239.
- McWhinney, Edward. 2007. *Self-Determination of Peoples and Plural-Ethnic States in Contemporary International Law: Failed States, Nation-Building, and the Alternative, Federal Option*. Dordrecht: Martinus Nijhoff Publishers.
- Melandri, Manuela. 2015. "Self-determination and State-building in International Law: The Need for a New Research

# Sustaining Peace and Internal Self-Determination in the UN Perspective

Written by Cristiana Carletti

Approach." *Journal of Conflict and Security Law* 20: 75–100.

Moore, Margaret. 1998. *National Self-Determination and Secession*. Oxford: Oxford University Press.

O'Connell, Mary Ellen. 1992. "Continuing Limits on UN Intervention in Civil War." *Indiana Law Journal* 67: 903–913.

Peace Agreement Access Tool. 1998. Draft Basic Agreement Concerning the Bougainville Reconciliation Government, 24 December 1998, available from <https://www.peaceagreements.org/view/370/Draft%20Basic%20Agreement%20Concerning%20the%20Bougainville%20Reconciliation%20Government>.

Peace Agreement Access Tool. 2002. The third session of peace talks between the Government of Sri Lanka (GOSL) and the Liberation Tigers of Tamil Eelam (LTTE) (Oslo Communique), 5 December 2002, available from [https://www.peaceagreements.org/wview/1160/The%20third%20session%20of%20peace%20talks%20between%20the%20Government%20of%20Sri%20Lanka%20\(GOSL\)%20and%20the%20Liberation%20Tigers%20of%20Tamil%20Eelam%20\(LTTE\)%20\(Oslo%20Communique\)](https://www.peaceagreements.org/wview/1160/The%20third%20session%20of%20peace%20talks%20between%20the%20Government%20of%20Sri%20Lanka%20(GOSL)%20and%20the%20Liberation%20Tigers%20of%20Tamil%20Eelam%20(LTTE)%20(Oslo%20Communique)).

Peace Agreement Access Tool. 2003a. Human Rights issues relating to the peace process, 8 February 2003, available from <https://www.peaceagreements.org/view/1280/>.

Peace Agreement Access Tool. 2003b. Sri Lanka Peace Talks – Agreed Statement on behalf of the Parties, 2 March 2003, available from <https://www.peaceagreements.org/masterdocument/1278>.

Paris, Roland. 2004. *At War's End: Building Peace After Civil Conflict*. Cambridge: Cambridge University Press.

Pomerance, Michla. 1982. *Self-Determination in Law and Practice. The New Doctrine in the United Nations*. The Hague: Martinus Nijhoff Publishers.

Quinn, David. 2007. "Self-determination Movements and their Outcomes." In *Peace and Conflict 2008*, edited by J. Joseph Hewitt, Jonathan Wilkenfeld, and Ted Robert Gurr, 33–38. Boulder: Paradigm Publishers.

Richmond, Oliver. 2009. "Becoming Liberal, Unbecoming Liberalism: Liberal–Local Hybridity via the Everyday as a Response to the Paradoxes of Liberal Peacebuilding." *Journal of Intervention and Statebuilding* 3: 324–344.

Rosas, Allan. 1993. "Internal Self-Determination." In *Modern Law of Self-Determination*, edited by Christian Tomuschat, 225–252. London: Martinus Nijhoff Publishers.

Salmon, Jean. 1993. "Internal Aspects of the Right to Self-Determination: Towards a Democratic Legitimacy Principle." In *Modern Law of Self-Determination*, edited by Christian Tomuschat, 253–282. London: Martinus Nijhoff Publishers.

Sapiano, Jenna, Christine Bell, Kimana Zulueta-Fuelscher, Sumit Bisarya, and Asanga Welikala. 2016. *Constitution-Building in Political Settlement Processes: The Quest for Inclusion*. Stockholm. International Institute for Democracy and Electoral Assistance.

Saul, Matthew. 2011a. "Local Ownership of Post-Conflict Reconstruction in International Law: The Initiation of International Involvement." *Journal of Conflict and Security Law* 16: 165–206.

Saul, Matthew. 2011b. "The Normative Status of Self-Determination in International Law: A Formula for Uncertainty in the Scope and Content of the Right?" *Human Rights Law Review* 11: 609–644.

Security Council Resolution 2282/2016, *Post-conflict peacebuilding*, S/RES/2282 (27 April 2016), available from [https://undocs.org/S/RES/2282\(2016\)](https://undocs.org/S/RES/2282(2016)).

# Sustaining Peace and Internal Self-Determination in the UN Perspective

Written by Cristiana Carletti

Senaratne, Kalana. 2013. "Internal Self-Determination in International Law: A Critical Third-World Perspective." *Asian Journal of International Law* 3: 305–339.

Sriram, Chandra Lekha. 2008. *Peace as Governance: Power-Sharing, Armed Groups and Contemporary Peace Negotiations*. Basingstoke: Palgrave.

Summers, James. 2007. *Peoples and International Law: How Nationalism and Self-Determination Shape a Contemporary Law of Nations*. Leiden: Martinus Nijhoff Publishers.

Summers, James. 2013. "The Internal and External Aspects of Self-Determination Reconsidered." In *Statehood and Self-Determination: Reconciling Tradition and Modernity in International Law*, edited by Duncan French, 229–249. Cambridge: Cambridge University Press.

Thornberry, Patrick. 1989. "Self-Determination, Minorities, Human Rights: A Review of International Instruments." *International and Comparative Law Quarterly* 38: 867–889.

Thornberry, Patrick. 1993. "The Democratic or Internal Aspect of Self-Determination with Some Remarks on Federalism." In *Modern Law of Self-Determination*, edited by Christian Tomuschat, 101–138. Dordrecht: Martinus Nijhoff Publishers.

Tomuschat, Christian. 1992. "Democratic Pluralism: The Right to Political Opposition." In *The Strength of Diversity: Human Rights and Pluralist Democracy*, edited by Allan Rosas and J Helsegen, 27–48. Dordrecht: Martinus Nijhoff Publishers.

Tomuschat, Christian. 1993. *Modern Law of Self-Determination*. Dordrecht: Martinus Nijhoff Publishers.

Tschirgi, Necla. 2004. *Post-Conflict Peacebuilding Revisited: Achievements, Limitations, Challenges*. A conference paper. New York: WSP International/IPA Peacebuilding Forum. [http://www.operationspaix.net/DATA/DOCUMENT/5766~v~Post-conflict\\_Peacebuilding\\_Revisited.pdf](http://www.operationspaix.net/DATA/DOCUMENT/5766~v~Post-conflict_Peacebuilding_Revisited.pdf).

United Nations, General Assembly and Security Council, *Letter from the Permanent Representatives of Ireland, Mexico and South Africa to the United Nations addressed to the President of the General Assembly and the President of the Security Council*, A/64/868 -S/2010/393(21 July 2010) available from [undocs.org/en/A/64/868](http://undocs.org/en/A/64/868).

United Nations, General Assembly and Security Council, *Letter from Chair of the Advisory Group of Experts on the Review of the Peacebuilding Architecture addressed to the President of the General Assembly and the President of the Security Council*, A/69/968-S/2015/490 (29 June 2015), available from [undocs.org/en/A/69/968](http://undocs.org/en/A/69/968).

United Nations, General Assembly and Security Council, *Letter from the Chair of the Peacebuilding Commission addressed to the President of the General Assembly and the President of the Security Council*, A/72/707-S/2018/43 (18 January 2018), available from [https://digitallibrary.un.org/record/1656332/files/A\\_73\\_645%26S\\_2018\\_1105-EN.pdf](https://digitallibrary.un.org/record/1656332/files/A_73_645%26S_2018_1105-EN.pdf).

United Nations, Secretary General, *Letter addressed to the President of the Security Council*, S/2001/988 (23 October 2001), 30 August 2001, available from <https://undocs.org/S/2001/988>.

United Nations, Statement by the President of the Security Council, *Peace-building: towards a comprehensive approach*, S/PRST/2001/5 (20 February 2001).

Valadez, Jorge. 2018. *Deliberative Democracy, Political Legitimacy, and Self-determination in Multi-cultural Societies*. New York: Routledge.

Walter, Christian, Antje von Ungern-Sternberg, and Kavus Abushov. 2014. *Self-Determination and Secession in*

# Sustaining Peace and Internal Self-Determination in the UN Perspective

Written by Cristiana Carletti

*International Law*. Oxford: Oxford University Press.

Weller, Mark. 2009. "Settling Self-determination Conflicts: Recent Developments." *European Journal of International Law* 20: 111-165.

Werner, Wouter G. 2001. "Self-Determination and Civil War." *Journal of Conflict and Security Law* 6: 171-190.

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