CARNEGIE COUNCIL *for Ethics in International Affairs*

Self-Determination and Conflict Resolution: From Kosovo to Sudan

Public Affairs

Louise Arbour, **Joanne J. Myers**

Transcript

Introduction

JOANNE MYERS: I'm Joanne Myers, Director of Public Affairs Programs, and on behalf of the Carnegie Council, I'd like to thank you all for joining us.

It is a great pleasure to be hosting one of the most distinguished members of the international community, The Honorable Louise Arbour. Ms. Arbour is currently president and CEO of the International Crisis Group. The ICG, as it is often referred to, is an independent, not-for-profit non-governmental organization that is known for its commitment to promoting peaceful resolution to conflicts. It is also one of the best sources for information and reports on conflicts around the world.

I know that there are many in the audience who are familiar with the extraordinary career of this eminent legal scholar and have followed her journey from law professor, to judge, to serving as a former Chief Prosecutor for the International Criminal Tribunal for the former Yugoslavia and Rwanda, to UN High Commissioner for Human Rights. Still, for those of you who are less knowledgeable, I hope you'll take a moment to review her very impressive résumé before she begins speaking about "Self-Determination and Conflict Resolution: From Kosovo to Sudan."

The right of nations to self-determination is a principle recognized in international law and states that nations have the right to freely decide on their political status or form of government without outside interference.

The principle does not state how the decision is to be made or what the outcome should be. Neither does it state what constitutes a nation. In fact, there are conflicting definitions and legal criteria for determining which groups may legitimately claim the right to self-determination, which has, in turn, led to an increase in the number of conflicts within states.

The most recent example is Kosovo. In the mid 1990s, Kosovo, a largely ethnic Albanian nation, sought independence on territories long held by ethnic Serbs. Conflict between the two culminated in the 1996-1999 Kosovo War. But when the war ended, the international negotiations to determine the final status of Kosovo were unsuccessful.

In February 2008, the Kosovo Assembly voted unanimously for a unilateral declaration of independence from Serbia. Serbia rejected this, claiming Kosovo to be part of its territory. Nevertheless, on July 22 of this year, the International Court of Justice [ICJ], the United Nation's highest court, ruled that Kosovo's independence from Serbia was legal. This ruling could strengthen aspirations for other ethnic minorities around the world in their quest for independence.

While there are many ticking time bombs, the one that grabs our immediate attention is what is to take place in the Sudan when a referendum on the independence of Southern Sudan is held in January 2011. It is expected that Southern Sudan will vote to secede from the North, which will, in turn, raise intractable problems. The question is, what can be done to limit the potential for violence?

Although the ability to direct parties in conflict is often limited, one can facilitate the process by proposing alternative methods of engagement towards peaceful resolution of conflict. Our speaker knows this so very well. Throughout her career, Louise Arbour has shown the world skilled leadership by her moral courage, tenacity, and her determination to seek peace through justice. In her position as head of the ICG, she continues to do just that.

Please join me in giving a very warm welcome to our very distinguished guest today, The Honorable Louise Arbour.

Thank you so much for coming.

Remarks

LOUISE ARBOUR: Thank you very much Joanne, and thank you to the Carnegie Council for Ethics in International Affairs for giving me an opportunity to speak to you today.

I realize there are a few Canadians, and maybe even native Quebecers, in the room, and I'm sure they are very nervous to think that I'll be talking about a subject that has occupied and preoccupied so many of us for so long. But I'll tell all of them, just relax. I'll stay within the Kosovo-to-Sudan landscape so as not to make anybody too nervous.

Since 1998, the International Crisis Group, of which I have been president for about a year, has supported independence for Kosovo. Back in 1998, which was still at the height of the conflict between NATO and the Serb government, Crisis Group took the position that the Federal Republic of Yugoslavia had been unwilling to permit the free exercise of the Kosovo Albanians' right to self-determination and that Kosovo was now entitled to create its own international status separate from the Federal Republic of Yugoslavia.

The view of Crisis Group was that the denial by Belgrade of Kosovo Albanians' political, economic, social, and cultural rights meant that they had a right to seek self-determination externally.

Since then, Crisis Group has published 46 reports on Kosovo. Our most recent report, which was published in August 2010, included a quite controversial recommendation that international actors should not prevent Kosovars and Serbs from negotiating together on issues that could include land swaps, as long as their talks would help them put a final resolution to this conflict and would lead to a recognition of Kosovo's independence by Serbia. But our position on Kosovo's independence has remained the same throughout, which is that we support Kosovo's right to secede and to be

recognized by the international community as an independent state.

In May 2010 we published a report on war crimes in Sri Lanka in which we detailed very severe violations of international humanitarian law, both by the Sri Lankan government forces and by the Tamil Tigers [LTTE], particularly during the last four or five months of that terrible war, which they had waged for a period of over 30 years.

The evidence that our investigators gathered suggested that in these last few months of the war tens of thousands of Tamil civilians—men, women, and children—were killed. Many were wounded. They were deliberate attacks. There is, we suggest, credible evidence that there were deliberate attacks on civilian targets, on hospitals, and an intentional shelling of civilians by the Sri Lankan forces. There is also evidence to suggest that through the chain of command, the responsibility is within the top of the government and military leaders.

We called for an international investigation into these alleged war crimes in Sri Lanka. We felt that this had to be an international investigation, given the demonstrated lack of political will or capacity for genuine, credible domestic investigation inside the country.

Yet, despite the increasingly authoritarian regime in Sri Lanka and its still appalling treatment of the Tamil minority, Crisis Group believes that the best means of ensuring the Tamils' right to self-determination is still within the existing borders of the Sri Lankan state. We have actually published a report on the Tamil diaspora urging Tamil leaders outside Sri Lanka not only to renounce explicitly the LTTE methodology, but also to renounce its separatist ideology, if it is to play a useful role in opening a political space for the accommodation of the Tamils' right to self-determination inside the existing state or Sri Lanka.

In Sudan, the South self-determination referendum, which is scheduled for early 2011, if genuine, we are persuaded like most observers that it will produce a very strong vote for secession from the North. The Comprehensive Peace Agreement [CPA], which was signed in 2005 between the North and South and ended 20 years of very brutal warfare, provides for that referendum. It also envisaged that the Khartoum government, during that five-year period between then and now, should have implemented reforms to make unity attractive. That's the language of the CPA. Failing that, a referendum would have to be accepted as the method for determining the future of the South.

Very little progress has been made in this project of making unity attractive. It's fair to say that the conflict in Darfur provided a pretty catastrophic distraction from the North-South project. We have been supporting the implementation of the Comprehensive Peace Agreement. The goals of unity having failed, we have urged the international community to support the referendum process and to accompany—if that's the result—the creation of a new state of South Sudan in Africa.

The Kosovo, Sri Lanka, and Sudan conflicts are only three of approximately 60 conflicts that the International Crisis Group covers and reports on. We publish approximately 80 to 85 reports per year, covering conflict situations all over the world. We put all our work product on our website. We work from the ground up. We are not driven by any particular national interest or ideology.

The reports are prescriptive for the most part, not only descriptive. We take them and engage directly at the highest possible levels with leaders in Washington, New York, Brussels, and increasingly in emerging centers of important decision making, particularly in the global South, in order to promote the peaceful resolution of conflict and, if at all possible, the actual prevention of the flare-up of armed

conflict.

It's pretty clear in the cases of Kosovo, Sri Lanka, and Sudan that there is an actual source of deadly confrontation linked to a theme that is very current in our reporting, which is the clash between the principle of territorial integrity and the right to self-determination. It is a clash that takes place at the confluence of law, politics, power, economics, and the search for identity.

Crisis Group has dealt with a variety of situations in the last several years where conflict, including armed conflict, was triggered either by the purported exercise of the right to self-determination or by efforts to resist it. In many cases, secession claims are rooted in a history of repression, exclusionary visions of governance, or the denial of rights of minority groups, which drives these groups to pursue self-determination outside the confines of state borders.

I mentioned the three, but I could just as easily have included Somaliland and Montenegro, where we have supported independence; northern Iraq, where we have defended the unity and territorial integrity of Iraq; or Abkhazia, South Ossetia, Nagorno-Karabakh, Aceh, or Kashmir, where we have avoided taking an explicit position either for or against secession, but all cases where secession is the movement and claims continue to be advanced.

We believe at the Crisis Group that every conflict situation is different, and our work and analyses are profoundly contextual. That's why we feel very committed to working directly from the field. Having said that, especially when we see this landscape of self-determination claims, it is useful to explore the contours of this right to self-determination, in order to ensure that the prescriptions we offer for conflict prevention are well anchored in law, as well as in political reality.

Let me turn briefly to the legal framework. The thrust of my argument starts from the basis that neither the right to self-determination nor the principle of territorial integrity can *a priori* trump each other. There is no dominance of one principle over the other. It's only by understanding when and how the right to self-determination properly applies that we can effectively put in place processes which will stand some chance of averting or rapidly ending secessionist-based conflict.

The recent opinion of the International Court of Justice on the legality of Kosovo's unilateral declaration of independence provides a useful but certainly not dispositive backdrop**.** On July 22, 2010, the Court rendered its nonbinding opinion on the question that was posed to the Court by the General Assembly. The question was as follows: Is the unilateral declaration of independence by the provisional institutions of self-government in Kosovo in accordance with international law?

I don't propose to engage in a detailed analysis of the opinion, but it's critical to observe that the Court was very careful to articulate the narrow scope of its opinion. It concluded that there was no rule of international law prohibiting that declaration of independence and that in the circumstances Kosovo's unilateral declaration was not in violation of international law. The Court, however, went no further. It explicitly refrained from ruling on the legality of secession itself. It ruled solely on the legality of the unilateral declaration.

It sounds like a very subtle point, but it's absolutely critical. As such, it did not address the efficacy of Kosovo's unilateral declaration of independence or of the level of international recognition that it attracted in actually creating an independent sovereign Kosovo state. The ICJ's opinion in that case may or may not lead to a wave of additional recognitions for Kosovo's independence. These will be political reactions to the Court's opinion.

As the Court points out, some unilateral declarations of independence in the past have been specifically repudiated by the international community. It mentioned southern Rhodesia in 1965, northern Cyprus in 1983, and Republika Srpska and Bosnia in 1992. Having surveyed these cases, the Court found that there was no international law principle, as such, prohibiting unilateral declarations of independence.

In the cases of repudiation, this was very contextual and based on the fact that in southern Rhodesia, Republika Sprska, and northern Cyprus there was the reality or the expectation that these secessionist movements would be accompanied by the unlawful use of force or other egregious violations of norms of international law, which was not necessarily the case elsewhere.

While secessionists elsewhere would be wise to take limited comfort from the Court's opinion in the Kosovo case, equally would those authorities who currently assert the sanctity of their existing borders as an absolute bar to any secessionist demands be very wise not to take any comfort from the Court's opinion.

The ICG's Kosovo opinion leaves unanswered the important legal question of whether a right to secession can be found in the right to self-determination, and if so, in what circumstances. For that we need to examine the right to self-determination itself.

This is a right that is expressed in Article 1 of the United Nations Charter and also in Article 1 of the two most important international human rights instruments: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights. It says in all these documents, "All people have the right to self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social, and cultural development."

Even though it's formulated not as an individual right, but as "the right of a people," it does belong to the body of international law that concerns itself directly with individual rights, even though it's said as "the right of a people," rather than rights of states, and it is considered a general principle of international law.

The third paragraph in the Preamble of the Universal Declaration of Human Rights in my view has tremendous significance in the context of the right to self-determination and to the peaceful resolution of conflict. This paragraph in the Preamble reads as follows: "Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law."

Since self-determination is a fundamental human right, I suggest that it should be protected by the rule of law if man is not to turn, as the Preamble states, "as a last resort, to rebellion against tyranny and oppression."

It's unclear whether this "recourse to rebellion" is meant merely as a description of a potential reality or whether it contains an acceptance that, in the face of tyranny and oppression, rebellion would be not only inevitable, but actually justifiable. But on its face, the right of peoples to freely determine their political status unfortunately does not address specifically how and when this right is to be exercised.

Whether the right to self-determination includes an entitlement to full state sovereignty, therefore, requires the examination of another principle, which is the principle of territorial integrity of states. That principle is often advanced to block any secessionist claim. The International Court of Justice, in its consideration of the Kosovo case, made an important observation—namely, that the scope of the principle of territorial integrity is confined to the sphere of relationships between states. By contrast, the right to self-determination deals with relations between states and people.

It's an important distinction. It invites us to consider that when these principles appear to clash, they should be interpreted in a way that maximizes the fullest effect of both. I suggest that we must seek to reconcile these apparently competing principles. International law has developed a framework to try to give the fullest effect to both these principles.

It has asserted that self-determination is a right that must be initially fulfilled internally—that is, within the boundaries of existing states. This imposes on sovereign states serious obligations regarding both democracy—that is, participation—as the preferred method for a people to freely determine its political status, and, of course, the protection of minority rights to ensure the fullest protection to the free pursuit of people's economic, social, and cultural development.

In that way, international law will protect the territorial integrity of a state as long as that state's government represents all the peoples on its territory without discrimination and in full respect of their right to pursue their own self-fulfillment. This right is to be guaranteed and includes the protection of language rights, the freedom of religion, freedom of speech and assembly, and so on.

When a state proves unwilling or unable to provide for this internal fulfillment of the right to self-determination, that right may become an external right. At that point it may override the principle of territorial integrity by providing to "a people a right to secede from the parent state."

This has been recognized in very narrow circumstances, but particularly in cases of people under colonial rule or under foreign occupation—although in that sense one might argue that it's their own territorial integrity that would be restored. Arguably—and this is not finally decided, and certainly not in the Kosovo case—the same could be said of cases of subjugation, domination, or exploitation of the people by its parent state where the denial of the right to self-determination is so profound that the external right is then triggered.

In the Kosovo case, the Court referred to claims that the population of Kosovo had the right to an independent state because of that province's recent history. This is referred to as remedial secession.

But the Court explicitly refused to deal with that issue, on the basis that it was beyond the scope of the question that was put to it. That's why nobody should take too much comfort from the decision of the Court, because it really doesn't deal with this issue.

The Supreme Court of Canada, in the Quebec secession reference in 1996, addressed that question and again did not decide the point, merely noting that a right to secession could possibly arise "where a people is denied the meaningful exercise of its right to self-determination within the state of which it forms part."

At this stage it's fair to say that in international law there is clearly no right to secede as such, but that the right to self-determination may permit in some circumstances unilateral secession, and in

such cases, international recognition by other states completes the process and gives efficacy to the creation of a newly created state. This legal framework informs, but only partially, the political response to claims of that nature.

From a conflict-prevention perspective, there can be no absolutist position. Territorial integrity should be maintained, but not by the brutal repression of a people in violation of its right to self-determination. That right requires that there be internal political space for the free pursuit of a people's social, economic, and cultural development, and both international law and political reality will ensure that only the most severe violations of that right—colonialism or its equivalent—will trigger a right to secede or the external right.

I don't want to take very much time, but I would like to turn now to criteria outside this legal framework, because when secession claims are advanced, the first thing we should observe is that they should be addressed by orderly, peaceful processes. We should never advocate the recourse to force, either to advance or block these rights. We should, instead, constantly search for orderly processes.

For instance, secession should preferably be effected under domestic law. Some federal constitutions actually provide for mechanisms for, if not their total dissolution, at least parts of secession. Or in the case of Sudan, the Comprehensive Peace Agreement provides for a binding referendum. That's why it's critical to support that process. In the absence of a prescribed process, however, secession could still be effected consensually, with international actors supporting bilateral, peaceful initiatives.

With the absence of a consensual, negotiated successful process, I suggest that the international community should support a secessionist enterprise when the legal conditions are fulfilled—as I said, they are very narrow—and when it is otherwise appropriate to do so. That begs the question of when it is otherwise appropriate to do so. That's very much the kind of environment in which Crisis Group operates in a contextual fashion. I'll give you just a string of potential criteria that would maybe inform the decision.

The first criterion that is often advanced is the one of last resort. As I have already discussed, claims of self-determination should ideally be resolved within the framework of existing states. Generally, we would support independence only where there is no hope for the conflict to be resolved or for the right to self-determination to be fully realized within existing borders.

The case of Kosovo, for example, especially after the 1999 war, made it clear that it would have been then, and still now, impossible for the right of Kosovars to be sufficiently accommodated within the framework of a Yugoslav or Serbian state. Independence for Kosovo was seen as, and I continue to believe is, the only solution that could lead to lasting stability in the region itself.

In the case of Somaliland, insistence by the African Union on the increasingly abstract notion of national unity and territorial integrity of the Somali Republic, we believe, should not be a bar to the aspiration of the creation of a separate state, when unity is simply no longer a feasible or realistic option.

The second principle, apart from last resort, is that of popular support. The Kosovo Albanians' overwhelming support for independence was, and remains, a key factor. Questions of secession should be decided democratically, as in Montenegro, for instance, through the referendum in 2005,

and the forthcoming referendum in Sudan.

Crisis Group often draws attention—which is an important distinction—to the disparity between sometimes very extreme claims of secessionist leaders and the frequently considerably more moderate views of their wider populations, who may be more realistic in their aspirations. We believe that is the case of the Tamil population inside Sri Lanka and that we should be wary of much more extreme claims often advanced by the aspirants. The Supreme Court of Canada, for instance, insisted that the secession referendum would require at the minimum a clear majority answering a clear question.

It's important to consider also—and in my view, this is very fundamental—the right of minorities within the secessionist minority itself and the likelihood that their rights would be adequately protected within the newly separated state. This will be a very important question in South Sudan after the referendum, where there are ethnic tensions that are currently potentially suppressed by the unity of the secessionist movement, but that will quickly emerge when the state is constituted as an independent state. Secession may provoke population displacement and further unrest if the newly created nation-state is unwilling or unable to accommodate its own newly created minorities.

It's often advanced also that claims of sovereignty have to be earned. In general terms, I'm very wary of any notion that fundamental rights need to be earned. In my view, they don't. That's why they are fundamental rights. Yet there is no question that, for instance, Somaliland's democratic root and functioning institutions assist in advancing the legitimacy of its claim to independence.

In the same way, for instance, ahead of Montenegro's referendum in 2005, we had argued that Montenegro was the only republic of the former Yugoslavia that had formed a genuinely multiethnic government without internal conflict. In that sense, it's not that the right has to be earned, but that the realization of the right, has to be compatible with the rights of others.

Conversely, at the other extreme, is the Tamil Tigers. Its brutal rule of the area where it controlled its own people, and the atrocities perpetrated over the years by the LTTE, including ethnic cleansing and massacres, in their treatment of the Muslim minority inside their areas undermined very severely their secessionist claim.

A related concern is one of state feasibility. Can a territorial claim easily be asserted within existing or easily defined borders? Is there a match between the people and a claim to an easily defined territory or are they so diffuse that it would be virtually impossible to have the geographic creation of a state?

There are many other criteria. One that is often advanced is the question of whether there is economic feasibility for the aspiring new state. We need to be very careful in not setting the bar any higher than we do for existing states. There are currently many developing countries that are extremely economically dependent on foreign assistance, including in some cases for the support of up to 50 percent of their budget. When looking, for instance, at the viability of South Sudan, we shouldn't set the bar any higher than we do for existing states.

These are some of the criteria that are often advanced, even when the legal threshold for a secessionist movement is met. We also need to consider the question of regional dynamics and precedence. Our calls on the African Union to engage positively with questions of separation have to also defer to their own concern about the beginning of redrawing of borders on that continent.

Finally, there is a host of intangible factors that come into play—history, culture, language, religion, emotional—some would say at times totally irrational—aspirations, grievances, loyalties. All these will come into the mix of initiatives and responses that will either support or attempt to thwart a secessionist project.

Let me conclude by suggesting that international actors would be very wise to remember the warning in the Preamble of the International Declaration of Human Rights that people will turn to rebellion against tyranny and oppression unless their fundamental rights are protected by the rule of law. International actors should make every effort to promote the full respect of the right of peoples to self-determination by national governments.

In order to avoid the emergence of legitimate secessionist claims, states must recognize legitimate grievances by their national minorities and must address them appropriately, including by providing some form of political autonomy, if appropriate, but certainly by ensuring political participation, as well as social, economic, and cultural protection. Inclusive governance, the best prophylactic against many types of conflict, also provides the best protection against secession claims surfacing, turning violent, and being unresolvable in the first place.

Even if they do turn violent, faced with the total breakdown of the rule of law, the international community cannot blindly support the monopoly over the use of force by governments who have forfeited any legitimate entitlement to such monopoly.

I conclude, again, by stressing that I don't think we should blindly prefer the principle of territorial integrity over claims of self-determination when there is no basis in law, in politics, or in any form of moral grounding for expressing such preference.

Thank you very much for listening.

Questions and Answers

QUESTION: Ms. Arbour, my question may be a little unfair because it requires a knowledge of American history, which may not be appropriate for a Canadian.

I wonder if you could apply your analysis to the situation in 1861 in this country, where the southern states claimed that their rights of self-determination were being limited by the federal government and the federal government insisted that the right for territorial integrity trumped the rights of the southerners.

LOUISE ARBOUR: I can't. Especially in this audience, it would be hugely presumptuous. I just don't know enough.

It's very difficult to look back, because things get resolved by a series of factors that acquire over time their own legitimacy. This entire analysis is meant to be prospective. It is very difficult to apply it retroactively, certainly by someone as ignorant as I am of American history.

QUESTION: In the case of a prospective Kurdistan, it struck me that this might be a fairly unique example where you had two sovereign states, one formerly a dictatorship in Iraq and the other is a democracy in Turkey, with more or less outlined ethnic borders for the Kurds.

How is the ICG treating the prospective Kurdistan issue?

LOUISE ARBOUR: We have not addressed this particular issue or the claim for the formation of a separate state. This is complicated, and you pointed out an issue that would arise very frequently, for instance, in Africa where you see self-determination claims that are asserted against more than one state.

It's difficult enough to figure it out when it's asserted against a parent state. In Africa that's very much part of the concern, that the colonial boundaries, if we are to embark on the rights of—and we haven't talked about what "a people" is, what this core group is that asserts the right to self-determination. But if we look at this on an ethnic basis, for instance, or other forms of identity allegiance, it becomes much more complicated if it's asserted against two states. In some cases it would be even more than that. We haven't addressed that particular claim.

It's fair to say that we would also constantly want to promote, as I think we must in international law, the fulfillment of the right within existing borders. That is, encouraging existing states to democratize or permit forms of participation, including some forms of autonomy, going as far as is necessary to accommodate the self-determination claim within existing borders.

How it then interplays where a group of people are currently divided between two states, whether they are both sufficiently democratic to protect the right within their own borders—this kind of lack of unity of the group poses a slightly different question.

QUESTION: Louise, thanks for a wonderful tutorial. You avoided discussing, to my mind, the single biggest failure of the international community in this respect, which is Kashmir, and which has now boiled over into a very violent affair.

Originally, a referendum was intended, but was never held; division never occurred. Now there is a demand for independence, at least for part of Kashmir. How do you view it?

LOUISE ARBOUR: Crisis Group does work in the region and we have published over time in Kashmir. I mentioned that there are many circumstances. Kashmir is one of them. It's not the only one. Abkhazia, South Ossetia in Georgia—there are many cases in which we haven't taken a position.

Even though the Crisis Group describes itself as a conflict-prevention organization, it's fair to say our work is equally divided between cases that are conflict prevention, conflict management, and conflict resolution. In the case of Kashmir, we are still in a conflict-management model. Everybody would want to advocate a resolution.

In the current political landscape between India and Pakistan, there is possibly the lack of appetite for international brokers to step up to the plate and address this issue, since they are somewhat preoccupied elsewhere, including in that region. What we see currently as realistic is this kind of conflict management, trying to minimize clashes, create an atmosphere for at least a peaceful continuity of the ambivalent status of the region.

In many cases we see it as premature to take a firm position one way or the other. It's currently exactly our view as well in the two Georgian regions.

This may lead to frozen conflicts, where 30 years from now we will still be talking about looking for options. That's exactly why in the case of Kosovo we felt that this is the time, while the conflict is still relatively recent, to try to unfreeze and not turn it into a permanent dispute involving the north of Kosovo. But in the case of Kashmir, conflict management is probably the only current realistic option.

QUESTION: It's an honor to listen to you discuss these things. I have a general question. The world has known empires where multiethnic and multi-religious groups have survived somehow, such as the Mogul and Roman Empires. In the world you deal with, how much is this driven by religion or by economics or by ethnicity? If you're an ethnic person but you are economically active and successful, maybe that's okay. How do you see these different pressures?

I'll make it easy. Just take religion.

LOUISE ARBOUR: Let me just take shelter in the work of my organization by stating at the outset that over its 15 years of existence, Crisis Group has deliberately never done work on this kind of broad thematic basis. We feel there are many think tanks in this country who are able to do so and are very well poised.

We have not produced these very big conflict-related thematic analyses, for instance, of the relationship between climate change and conflict or gender and conflict or the drug trade and conflict, although we have done some work on that. Anything I could give you in response to that question would be largely anecdotal and not particularly well anchored in analysis.

We are easily distracted currently by the predominance of religious extremism in fueling conflict. This comes and goes in history, and other factors will come and go and play a part. Climate change, for instance, and severe deprivation, particularly of access to food and water, will at times maybe look like the dominant characteristic as a source of conflict.

My own sense, for what it's worth, is that the root causes of conflict are extremely contextual. They are rooted in the particular history, the politics of a region, and so on. If there is the advocacy of a universal response at the stage of development that we are in in the world at large, the best response to the anticipation of conflict is the building of government institutions. Generally speaking, countries that have adequate mechanisms to handle conflictual situations do much better than countries in which the institutions are very frail, regardless of what the original trigger is for conflict.

I was the prosecutor for the War Crimes Tribunal for the former Yugoslavia and Rwanda. You would be hard-pressed to think of two models that are more extremely different in their culture, history, and so on. Yet both of them, within the span of a few years, led to terrible atrocities being perpetrated.

I'm often asked, "Do you see any commonality? Do you see any themes between the two?"

There are some. I can't tell you whether historians and others who will look with some distance to these two conflicts will see the same things I saw, which is a lot of pathologies.

First of all, the pathology of identity and the search for belonging, which is normally a very healthy human aspiration. We search for our personal identity and our belonging to the immediate family, the clan. This is how we determine the scope of our language, cultural, and religious affiliations, and define ourselves.

In the case of the region of Rwanda (including Burundi and the Great Lakes) to some extent these factors are still there. The pathology of identity there has turned into the desire to exclude and ultimately, in its most extreme form, to genocide and to the actual elimination of the other, as a form of affirming identity.

In the two cases also, there were pathologies of the principle of obedience, loyalties to leaders, fed by, in the case of the former Yugoslavia, communist ideology. In the case of Rwanda it was religious colonial teachings that overplayed obedience as a virtue, where people surrendered their own moral judgment.

There are just so many factors, I couldn't begin to do justice to it. But these were very striking to me in these cases. The surrender of personal moral judgment is a huge factor in mass slaughter. In both cases also there was extremely bad leadership. This would be putting it mildly.

QUESTION: I'm a New York-based lawyer. I'm originally from Kosovo. The focus seems to be on the right of self-determination of the people, but there doesn't seem to be much thinking about the right of certain governments over the people within their borders, to control them, to rule them, or to oppress them.

The last UN secretary-general, Kofi Annan, the Nobel Peace Prize winner, mentioned that the first duty of a government is to protect its people. If it doesn't do so, the international community has the right to intervene and the people have a right to secession. Why is there not as much of a focus on the government having rights over the people within certain borders?

Your analysis of the ICJ opinion was that there is a distinction between the legality of the declaration of independence and the legality of secession. Will it not be meaningless if the ICJ declares that there is a legality for declaring independence but it's illegal for secession? Will they contravene each other?

LOUISE ARBOUR: I'm not a big fan of rights of states. States are constructs that are governed by law. Certainly in what we aspire to are states that derive their power from the democratic will of the people.

I find it not particularly useful to contrast rights of states and rights of people. In the framework of international or universal or even national human-rights frameworks, people have the right to turn to the state for their protection and they have a right to participate in the system of governance to which they will then be subjected.

It's very dangerous to confuse rights of states and rights of current governments or people who lead. They have the onus of earning their entitlement to exercise authority over their fellow citizens. But as such, states are duty bearers, not rights holders in the framework of international human-rights law.

As for the distinction in the Court's opinion, all I can say is that this is very typical of legal reasoning. The Court said, "We were asked a narrow question. We will provide a narrow answer."

Whether there would be cases where the Court would say a unilateral declaration of independence is not against international law, but secession itself is not effective—this is very speculative. It could happen, if there was no international recognition, for instance. The secession itself could not become

effective, for instance, if the newly created state received no or virtually no international recognition or only the support, say, of one member-state of the United Nations.

But this is very speculative, and the Court deliberately did not, probably correctly, answer it. Especially in a context that is so intensely political, it's probably wise of the Court to say, "We've been asked a narrow question. Here's the narrow answer. Leave it to another day, where the question is posed clearly and the debate is then formulated clearly, to answer it."

QUESTION: In light of your brilliant analysis and your great knowledge of what this whole subject is about, what can the international community do to prevent genocide when it appears on the horizon or to prevent extremist groups or even individuals, such as suicide bombers?

LOUISE ARBOUR: In the aftermath, particularly, of the atrocities in the last 15 years in the former Yugoslavia and in Rwanda, there have been several responses outside the more classic arsenal of an international community response. One of them has been the creation of international criminal justice as a tool of conflict management: personal criminal responsibility of political and military leaders, the creation of these two tribunals, and the International Court of Justice**.**

It's not the sole response, but it's a novel one that in international law had never been used until about 15 years ago, except for Nuremburg and Tokyo, which had not been duplicated since. It's a modest response. It's one of them.

Another one has been the emerging doctrine of the responsibility to protect, which again is really struggling to anchor itself in the body politic of international actors, but is offering a very useful framework. It first of all asserts the obvious in international law, which is that sovereignty is not a shield against scrutiny. State sovereignty is a bundle of responsibilities. If it's understood that way, then the international community has an interest in ensuring that each state exercises its sovereignty in a way that is conducive to peaceful international relations and to the peaceful management of domestic disputes.

Starting from that premise, that states have the primary responsibility to protect their people, this doctrine asserts that if a state proves unwilling or unable to protect its own population, particularly against what are called, in general terms, mass atrocities—genocide, war crimes, crimes against humanity, and ethnic cleansing—then the international community has a responsibility, not a right.

A right is optional. If you have a right to intervene you have the privilege of declining to exercise it. That was the previous French doctrine of the *droit d'ingérance*, the right of humanitarian interference. This new doctrine speaks of the responsibility to protect.

If a state is clearly in default—that was the argument in the case of Darfur—of protecting its own population or, worse, is in collusion or responsible for attacks on its own population, the international community has a duty to intervene. Then there is a range of interventions—preventive measures, engagement, encouragement—and which ultimately, under the Security Council umbrella, could even include the use of force.

This doctrine has been now, at least rhetorically, accepted within the United Nations. But when I look at what happened a year ago in Sri Lanka, I was thinking, where is the doctrine? People were being slaughtered on the beaches of Sri Lanka, and the international response was absolutely nonexistent.

Recently, on a smaller scale, in Kyrgyzstan, you couldn't get the case into the Security Council, and regional organizations—OSCE [Organization for Security and Co-operation in Europe], the European Union, and the network of political organizations very much led by Russia—were all totally uninterested in interfering in the internal affairs of Kyrgyzstan. This was while the Uzbek population in the South was at tremendous risk, including massive displacement and killing.

The framework and the doctrine is there. Its application is very much at the mercy of political calculus.

QUESTION: Could you give us some successful examples of what you call the independence inside of borders?

When you talked about independence of ethnics—I'll use Kosovo—it didn't work. But give some examples where there has been conflict resolution, not the fact that the peoples themselves solved it.

LOUISE ARBOUR: I wish I could bring some of my more knowledgeable colleagues.

Federalism has been a mechanism of accommodation. One form of response is the granting of some autonomy, and as an example I can turn to my own country, Canada. The federal model has permitted the accommodation of an ongoing claim by some national peoples, the French-speaking people of Quebec, in asserting their desire for more and more autonomy, including in some cases for the creation of their own separate state.

This peaceful accommodation is to a large extent a factor of a very strong governance institution—the Supreme Court of Canada, which was hugely instrumental and is very much a model looked upon by other countries in designing a framework for the democratic resolution of claims and participation through institutions.

Different models of electoral systems and power sharing are mechanisms of accomodation. Certainly in many African countries you would want to promote that power sharing.

We cannot aspire to the elimination of conflict. In fact, in many circumstances we thrive on conflict. For instance, we promote conflictual activity in sport.

Crisis Group is interested in the prevention of armed conflict. We talk about conflict; it's really the prevention of violence. But clashes of aspirations, of access, I think, are—for the many examples that have been referred to, others might say they are far from being resolved. They are not resolved, but as long as they don't flare up into recourse to violence, that means we have the proper institutions to deal with the conflicting aspirations.

JOANNE MYERS: I want to thank you for sharing your expertise with us. It was an honor to have you with us today. Thank you.

Audio

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