Issues of self-determination in Burma

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Introduction

This paper seeks to provide an introduction to the concept of self-determination, and to suggest the importance of this concept in Burma. A comprehensive analysis of either topic is beyond the scope of this paper, which is aimed at readers without great familiarity with either area. Suggestions for further reading may be found in the references.

The paper begins by discussing the concept of self-determination, and its varied meanings. A brief history of the development of the concept follows, in which the meaning of self-determination beyond decolonisation is touched upon. The situation of minorities within a state is then considered. The second section of the paper is a discussion of the particular case of Burma.

1 The international context

What is self-determination?

Self-determination is a powerful and emotive concept, inspiring and threatening, frequently cited yet rarely defined. It is "a social and political fact in the contemporary world, which we are challenged to understand and master for what it is: an idée-force of powerful magnitude, a philosophical stance, a moral value, a social movement, a potent ideology, that may also be expressed, in one of its many guises, as a legal right in international law."

As a principle, self-determination achieves almost universal support, perhaps because it is difficult to be sure what it actually means. This support, however, rarely translates into encouragement from the international community for the break-up of States.
Statehood and self-determination have an ambiguous relationship. Self-determination supports statehood by giving a rationale for the acceptance of existing State boundaries and leadership. Yet self-determination also shows that “statehood per se embodies no particular virtue.”

In the ‘post-decolonisation’ era, the scope of self-determination in international law is a matter of debate. Any extension of the meaning of the concept beyond decolonisation is perceived by many States as a threat to territorial integrity. To understand the implications of the self-determination debate we need to consider the range of options encompassed by the term ‘self-determination’. One writer has identified at least eight of the more prominent ‘faces’ of self-determination as follows:

1. The established right to be free from colonial domination,
2. The converse of that - a right to remain dependent, if it represents the will of the dependent people who occupy a defined territory,
3. The right to dissolve a State, at least if done peacefully, and to form new states on the territory of the former one,
4. The disputed right to secede,
5. The right of divided States to reunite,
6. The right of limited autonomy, short of secession, for groups defined territorially or by common ethnic, religious or linguistic bonds - as in autonomous areas within confederations,
7. Rights of minority groups within a larger political entity, as recognised in Article 27 of the Covenant on Civil and Political Rights and in the General Assembly’s 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, and
8. The internal self-determination freedom to choose one’s form of government, or even more sharply, the right to a democratic form of government.

How far any of these will be internationally recognised as legitimate in different circumstances is quite unclear and depends on such variables as the political interests of regional powers. These factors are of tremendous importance for a country like Burma, where both the State rulers and ethnic insurgent groups have had a history of complex relationships with both neighbouring China and India. Self-determination is one of the central issues in Burma’s troubled past and present. The ethnic diversity, the differing treatment of ethnic groups, and cultural and economic dominance by the majority ethnic group are all potent factors in what has become an enormous and intractable tragedy.

**Historically**

Self-determination as a principle for ‘national’ ethnic-linguistic-cultural groups emerged as a natural corollary of developing nationalism in the eighteenth and nineteenth centuries. It was initially focussed in Europe, and came to the fore at the end of the First World War, when the German, Austro-Hungarian, and Ottoman empires were broken up and eight new States created, including Finland, Hungary, Czechoslovakia, Poland and Yugoslavia. “These new countries were designed to be nation-states, which conformed to the geography of existing national or ethnic groups.”
However, one must bear in mind that the geopolitical and strategic interests of the Great Powers largely determined whether and how the 'self-determination' process developed. Self-determination in 1919 otherwise had little to do with the demands of the peoples concerned. In addition, overseas colonies and 'nations' within the territories of the victorious powers were not considered candidates for self-determination. For those minorities whose claims to self-determination it was considered neither desirable nor necessary to meet, at the end of World War I the so-called minority treaties were adopted and subsequently overseen by the League of Nations. These were designed to protect ethnic and religious minorities from oppression, and to allow them to practise their own cultures and religions. The Second World War was to prove, however, that political will was insufficient to make these minority treaties any sort of guarantee at all, as millions of people comprising minority groups were denied even the right to life.

The twentieth century has seen the disintegration of the British, French, Dutch and Portuguese empires through Africa and Asia in the face of nationalist movements, which have drawn heavily on the ideal of self-determination. A notorious legacy of the colonisers was their tendency to ignore ethnic, linguistic, or other 'national' considerations. Burma is a perfect example of such a situation, where a political time bomb was left by the colonial administration upon independence. The dominant theme of decolonisation seemed to be to leave such complexities to be dealt with by the independent states that emerged from the process. After some turbulence, African States have elected to deal with the issue by maintaining existing colonial boundaries and concentrating on 'nation-building' activities. In Burma the issue remains unresolved, after the deaths of countless thousands of people.

**Decolonisation and beyond**

A common theme in commentaries on self-determination is the distinction between self-determination as a principle and as a right. Self-determination claims based on ethnicity or nationalist sentiment require recognition of the shift from “the territorially based right of self-determination developed by the United Nations in the context of decolonisation to the ethnic-linguistic-national principle of self-determination advocated... in 1919.” The shift from principle to legal rule had not occurred at the time of the drafting of the United Nations (UN) Charter or the early years of the UN, despite the political significance of the principle. The “moral and political imperatives of decolonisation,” however, led to the transformation, one of the clearest illustrations of which is the UN General Assembly's 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples.

The 1960 Declaration proclaims the necessity of “bringing to a speedy and unconditional end colonialism in all its forms and manifestations.” It also declares that independence should not be delayed on the pretext of inadequacy of political, economic, social or educational preparedness. While the thrust of the declaration is clear, a closer reading reveals “uncertainties arising from varying uses of the terms 'peoples', 'territories', and 'countries'. Although the title of the declaration refers only to 'colonial' countries and peoples, operative paragraph 2 refers expansively to the right of ['all peoples' to self-determination...].
impact on rights of the general rhetoric of self-determination. The principle of self-determination is expressed often enough in international documents and dialogue. For example, both UN human rights covenants, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, contain a common article 1, which states:

All peoples have the right of self-determination. By virtue of the right they freely determine their political status and freely pursue their economic, social and cultural development.

The reference to 'peoples' may at first blush suggest that ethnic groups are the beneficiaries of the article. In fact, 'peoples' has been understood as referring only to States and the entire populations within them. Even so, several States have attempted explicitly to limit any meaning of self-determination beyond decolonisation. The narrow interpretation of the word 'peoples' effectively limits any use of the concept of self-determination, beyond decolonisation, for non-State actors. One writer explains this idea that minorities are not 'peoples'. Rather, 'peoples' are "all inhabitants of each existing state, and the guarantee [in Article 1 of the covenants] denotes little more than the right of the population of every sovereign state to determine their own form of government without interference from other states. This is made clear by Article 1(2) of the UN Charter, which declares the UN's purposes, inter alia, 'to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples..."."14

One must not forget, however, that it is not unknown for the UN to recognise non-State actors as the legitimate representatives of peoples well before they achieve independent statehood, such as the ANC, SWAPO and the PLO. Generally, however, States have maintained the idea that self-determination is supportive of territorial integrity. From the other side of the spectrum, Non Government Organisations also attack the apparent tension between the two concepts, with opposite conclusions:

The often invoked contradiction between the principle of self-determination and the notion of territorial integrity is artificial. The latter, on one hand, can play a decisive role in the relationship among States to protect borders against external threats. On the other hand, the fundamental right of peoples' self-determination has to do with relationships between a State and a people; failure to respect this right implies raising those reservations...concerning territorial integrity.16

The Declaration on Friendly Relations17 was adopted by consensus by the UN General Assembly in 1970 after years of negotiation, and may be considered to state existing international law.18 It declares that "all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every state has the duty to respect this right in accordance with the provisions of the [UN] Charter". Again, this involves the troublesome word 'peoples'.

The objectives set out in the Declaration are not broad: "(a) to promote friendly relations and co-operation among States, and (b) to bring a speedy end to colonialism, hav-
Declaration firmly within the context of endorsing and strengthening the existing international order, specifically within a decolonisation framework. The only circumstances in the Declaration in which action is permitted against a State is if that State is not sufficiently representative of the people (which term, as opposed to 'peoples', underscores the idea of unity of the population within the state) within its territory. It is not apparent what this 'representation requirement' entails. It has been suggested that it does not imply explicit recognition within the government of all of the various ethnic, religious, linguistic and other communities. "Indeed, such a state might itself be considered to violate the requirements that it represent 'the whole people...without distinction as to race, creed or colour'."

One idea is that the Declaration must be read in the context of its time, when the South African and Southern Rhodesian regimes were almost universally opposed within the international community. In this context, the 'representative requirement' would involve a State not formally excluding "a particular group from participation in the political process, based on that group's race, creed, or colour...At the very least, a state with a democratic, non-discriminatory voting system whose political life is dominated by an ethnic majority would not be unrepresentative within the terms of the Declaration on Friendly Relations."  

While it is apparent that there are limits on the exercise of a claim to self-determination, it is difficult to state with any precision exactly where those limits fall. It has been argued that UN and State practice since 1960 provides evidence that "the international community recognises only a very limited right to 1) external self-determination, defined as the right to freedom from a former colonial power, and 2) internal self-determination, defined as independence of the whole state's population from foreign intervention or influence." In view of the Rhodesia/Zimbabwe and South Africa experiences, perhaps internal self-determination requires an expanded definition to include the sometimes-recognised right of independence of a majority from political exclusion by a minority. This, however, does not move us a great deal closer to knowing where the limits of self-determination fall.

Minorities within a state

The inter-war minorities' treaties failed dramatically to prevent the horrors prior to and during the Second World. "What emerged from that darkness - in which minorities suffered horrifically - was a new way of thinking about human rights which ironically denied them any special protection." This was the idea that human rights belonged to individuals, and if they were protected then the rights of peoples would automatically be preserved.

Minorities possess defined rights protecting their existence and the maintenance of their culture, language and religion, but in terms of self-determination, they really have no 'rights', chiefly because they are not accepted as 'peoples'. One writer, arguing against secession or self-determination for each and every minority wishing to take it up, sets out the 'peoples' / 'minorities' dichotomy:

Minority rights are the rights held by minorities... But the right of self-
tirely discrete rights to minorities on the one hand (minority rights, as elaborated in Article 27) and to peoples (self-determination rights, as provided in Article 1). One cannot - though many today try, lawyers as well as politicians - assert that minorities are peoples and that therefore minorities are entitled to the right of self-determination. This is simply to ignore the fact that the Political Covenant provides for two discrete rights. It also, more insidiously, denies the right of self-determination to those to whom it was guaranteed - the peoples of a state in their entirety.

Minorities have few options in international law to present their case, and have no standing before the International Court of Justice. The effect of this lack of options, along with the difficulties faced by States in recognising minority rights, may well be to increase tension as well as fears among minority groups themselves. "These fears are in part a reaction to the non-recognition of minority rights as such since the Second World War, as the concept of minorities has been sacrificed to state-building despite the fact that ethnicity and / or religion continues to define many internal conflicts."28

One approach that has been put forward is to address the lack of standing for minorities by the development of international arbitration to adjudicate claims by ethnic minorities to statehood or to increased political recognition. "Teams of lawyers are less expensive than armies, and do not slaughter each other. Millions of lives have been lost through secessionist movements, and while it may be idealistic to hope that both sides will respect an international court decision, at least that reasoned adjudication would provide some guide as to whether and on what sides other states or the Security Council should intervene to stop the conflict."29

While the idea of self-determination was never actually reserved for 'colonised' peoples only, until recently they were its main beneficiaries. In recent years, however, a number of ethnic groups have successfully demarcated their claims in the language of self-determination. The obstacles in their path are formidable, as they are effectively fighting established Statehood and its inherent dominance. International law, as a creation of States who rely on and intend it to maintain stability, obviously will not facilitate such a process. If the effect of international law were to assist in the destruction of States it would be a revolutionary tool, almost the obverse of a legal rule. It is not surprising, then that, rather than the principle of self-determination, "it is the principle of national unity that has been almost universally followed by the international community - which, after all, is composed of states whose interest is to maintain themselves."30

Of course on many occasions in the past decades minorities have, whether by force or otherwise, forged new international identities for themselves. However the international community is reluctant to support such a process, and tends to delay recognition for newly declared states comprised of former minorities until reality demands it.31 The partial erosion of State sovereignty through the development of human rights and other areas of international law provides a jurisprudential basis for recognition when political realities make it expedient.

As there are degrees of self-determination, there are also degrees of representative government. It has been argued that there is an inverse relationship between the degree of representative government, on the one hand, and the extent of destabilisation that the
government is at the high end of the scale of democracy, the only self-determination claims that will be given international credence are those with minimal destabilizing effect. If a government is extremely unrepresentative, much more destabilizing self-determination claims may well be recognized. Of course, geopolitical interests and alliances mean that political will may not exist to recognise the claim to self-determination of even the best qualified minority under the criteria described above.

Generally, the international community is extremely reluctant to recognise claims to self-determination by minorities within a State. International law has not greatly advanced the claims of such minorities since the establishment of the United Nations, and it would not seem prudent to expect otherwise from the ‘nations united’. “The reason why international law has made so little contribution to the reduction of ethnic strife is because of its positivist composition: it constructs its rules as a synthesis of what states in fact do, rather than by reference to what they should do according to principles of fairness and justice.”

Conclusion to Section 1

The ambiguities of the many shades of self-determination can often be useful for harnessing political support, both by States and ethnic groups seeking to increase their independence. The lack of precision can, however, be an obstacle to developing understanding of the issues. Self-determination can mean much more than the right to secede, which is often politically virtually impossible for minorities within a State, or spread across several States, such as the Kurds and several of Burma’s ethnic peoples. It should not be forgotten that varying degrees of self-determination exist which have the potential to dramatically improve the lives of the people involved without necessarily threatening the ‘territorial integrity’ of the State or States concerned.

The main obstacle for minorities is the fact that they have no recognition as ‘peoples’, and so international rhetoric about the principle of self-determination may actually bolster claims to State sovereignty. The gulf between the principle and the right of self-determination is not always easy to bridge, although one commentator envisages that “despite this limited contemporary definition of the right to self-determination - a definition created primarily by states - the principle of self-determination will continue to be a major political force both internationally and domestically. Indeed, developing concepts of human rights, minority rights, and indigenous rights may contribute directly to strengthening the principle of self-determination, even as state-developed law is seeking to minimize its post-colonial impact.”

2 Burma

Burma has over 100 ethnic groups, comprising seven major groups with numerous sub-groups and smaller distinct groups. Burma’s ethnic history is one overwhelmingly of conflict, which has dominated most spheres of life, at least since independence in 1948. While conflicts and wars were waged for countless generations prior to British rule, the
colonial era oversaw the transformation from traditional expressions of enmity to modern civil war. Colonial rule brought about vast changes in demographics, political geography and the political landscape generally. The region now known as Burma was a very different place at the end of its 62 years of full British occupation.\footnote{35}

One highly significant change was the fact that the new Union of Burma on independence in 1948 included the Frontier Areas, populated by diverse ethnic minority peoples living in a number of mini-states. Prior to independence these had been administered separately from the rest of Burma. British rule established and entrenched differing treatment for different ethnic peoples, which did little to reduce historic tensions between the peoples of hills and plains. As in many colonial territories, Burma's boundaries were decided as much by the political machinations of various regional colonising powers than by reference to the historical development of the peoples. The effect on the peoples concerned has been to divide them across frontiers, impede their development and undermine their cohesion. In terms of self-determination, though, perhaps an even more significant aspect of colonial rule was the deliberate British policy of bestowing different levels of self-rule upon different ethnic peoples. This has often been described as a policy of 'divide and rule', although no doubt to some extent it was motivated by the more simple aim of securing maximum local co-operation with least trouble on an as-needs basis. To appreciate the spectrum of fine distinctions considered appropriate for the many peoples of Burma under colonial rule, it is worth quoting from Martin Smith at some length, as he describes some examples of the differentiation from 1909 to the 1930s:

Under a series of reforms...a limited form of Home Rule was introduced... [T]hese reforms did little to address the very real problems of political representation posed by Burma's complex ethnic background. The convenient distinction in rule between the hills and plains that had evolved during the process of annexation came to be encoded in law. There were many odd anomalies. Burma remained divided into two distinct areas, namely Ministerial Burma, or the old Burma Proper, and the Frontier Areas, which became known as the Scheduled or Excluded Areas. For Ministerial Burma there was a parliament to which there were elections and a limited form of local democracy, though matters such as defence and external affairs remained the exclusive preserve of the governor. But the concept of communal representation, bitterly opposed by many [majority race] Burman politicians, was allowed in seats reserved for certain minorities, the Karen and immigrant Chinese, Indian and Anglo-Burma. Yet (and somewhat inconsistently) there was to be no separate representation for the Mon of Lower Burma; the question of seats for the Southern Chin (and Muslims), briefly considered in 1932, was ruled out... Meanwhile the vast hill tracts of the Frontier Areas remained directly under the governor... But again there were many inconsistencies. While most of the 'backward tracts' were left in a state of sleepy isolation, in the Shan states, which were considered more advanced, a Federal Council of Shan Chiefs was formed in 1922 [with certain representative powers]... Then, in a belated attempt to redress some of these inequalities, the Frontier Areas were themselves divided into two categories, Part I or Excluded Areas and Part II or Partially Excluded Areas. The Part II Areas were, in turn, di-

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and one without.\textsuperscript{36}

This complex process had the unsurprising effect of fuelling ethnic nationalist sentiments, which complicated somewhat the ‘Burmese national independence movement’. While considering the impact of the colonial era on ethnic nationalist aspirations, one also cannot ignore the effect of missionaries, who developed close relationships with several ethnic communities, provoking resentment and suspicion from many Burman nationalists. "Ethnic assertiveness and the expression of ethnic minority views became equated with the division of colonial rule."\textsuperscript{37}

The Panglong Agreement

At the close of World War II the independence movement had gained momentum, and Britain was clearly not intending to resist its pull. In view of the two separate administrations for Ministerial Burma and the Frontier Areas, questions arose as to the make-up of any future country, and whether the Frontier Areas should be included in it. The independence leaders were strong advocates of a united Burma, including all Frontier Areas, and in February 1947 a conference was held at Panglong in Shan State, attended by Shan, Kachin and Chin leaders as well as Burman leaders of the independence movement. The ‘Panglong Agreement’ was hammered out, which laid down that the peoples of the Frontier Areas could freely join in forming a federal union, be represented by one member to the Executive Council and take part in the writing of the new Constitution.\textsuperscript{38}

While the ethnic representatives had agreed before the Panglong Conference on such demands as secession rights, equal rights with Burmans and political autonomy, their united front collapsed and separate sub-agreements were actually reached by the Burman independence delegation with each group.\textsuperscript{39} One serious shortcoming of the Panglong Agreement was the lack of participation by representatives of most ethnic groups.

Both British and Burman politicians were perhaps reluctant to hold up the independence process with complicated questions about self-determination, autonomy or other ‘national’ issues concerning Burma’s ethnic groups. In view of the varied political weight the different ethnic groups had been able to wield under British rule, and their varied experiences with the concept of democratic governance, the issues were not necessarily susceptible to quick resolution. In textbook decolonising style, British policy towards the ethnic peoples reflected the British government’s reluctance to try to untangle a mess that had been years in the making. They tended to accept the Burman independence movement’s assurances that unification was desirable, yet failed to make their position clear to the ethnic peoples. Smith points out that numerous indications (and, in some cases, pledges) of future British support for the minority races had been given prior to independence, and that "[right up to independence, the hill peoples, particularly the Karens, continued to believe that, whatever the state of British negotiations with the [Burman independence party] AFPFL, they still had the ultimate right of self-determination. This is still the most contentious issue between the ethnic nationalists and the central government and explains, in part, the repeated failure of later peace negotiations."\textsuperscript{40}
It had been agreed by treaty between the Burman independence movement leaders (as part of a Provisional Government) and Britain that a constituent assembly should be convened to decide on a future Constitution for Burma. In 1947 a Frontier Areas Committee of Enquiry was established pursuant to agreement between the British Government and the Executive Council of the Governor of Burma. It was comprised of "equal numbers of persons from Ministerial Burma, nominated by the Executive Council, and of persons from the Frontier Areas, nominated by the Governor after consultation with the leaders of those areas, with a neutral Chairman from outside Burma selected by agreement," although there were complaints of Burman ethnic domination of the Committee. The Committee was established to enquire "as to the best method of associating the Frontier peoples with the working out of the new constitution for Burma."

The Committee made recommendations as to which ethnic peoples should be represented in the Constituent Assembly, which should be entitled to form states and which should be governed by either the future state or federal administrations. It is interesting to note, in the context of self-determination, some of the rather abruptly expressed views of the Committee regarding ‘appropriate’ representation in the Constituent Assembly, for example:

We found it impracticable to procure witnesses from the Naga Hills and the Wa States, but we have no hesitation in recommending that representatives need not be sought from these areas for the Constituent Assembly on account of the primitive nature of their civilisation and the impossibility of their finding persons who will be able to assist in the drawing up of Burma’s future constitution.

The overall thrust of the report was that the larger ethnic groups should be represented in the Constituent Assembly and that both the Frontier Areas and Ministerial Burma should combine as a new country. This is essentially what happened, interrupted briefly by the assassination of independence leader Aung San and many of his cabinet by a political rival, during the drafting of the Constitution.

The determination that all of the British-administered areas should be formed into one State (in the international sense) meant that the status of ‘peoples’ in international law was effectively no longer available to the ethnic groups comprising the whole state. This fact, combined with the unequal positions of the ethnic minorities (described further below) and the legal and political capacity of the majority to overrun the minorities, rendered their aspirations for self-determination virtually unrealisable.

The 1947 Constitution

The 1947 Constitution has been described as an attempt to blend liberal democratic and socialist ideas. It has also been described as a recipe for disaster, and in relation to providing the means for resolving self-determination questions for Burma's ethnic peoples, the 1947 Constitution was certainly a failure. Its most glaring problem was the inconsistency of rights allowed to different ethnic groups. Examples include that while Shan and Karenni States had the right to secede from the Union after ten years, Ka-
Division*51 with less rights, and there was no provision made at all for Mons or Arakanese. The whole Karen question wasn't solved at all, but two options were allowed for in the Constitution.

Relevantly for self-determination, the Constitution provided for a split of legislative powers between the Union and the States, although the effect remained that economically the States were dependent on the Union, which possessed rights over virtually all natural resources. In a concession to regional concerns, s 93 required that before a federal authority issued any authorisation for the exploitation, development or utilization of resources, the authority "shall consult the Union Minister for the State concerned." Section 91 allowed provision to be made by law "on principles of regional autonomy for delegating to representative bodies of such regions as may be defined in the law, specified powers in administrative, cultural and economic matters."

The Constitution reflected the unequal relations of the preceding years, and the minorities' individual bargaining powers, which, it could be argued, "owed more to the haphazard nature and legal quirks of British rule than to any genuine national aspirations."52

Post-independence ethnic conflict and military rule

Frustration with the lack of resolution in the Constitution of numerous long-standing problems was manifested in armed outbreaks following independence. As a result, Burma's military has been engaged in suppressing ethnic rebellion since the birth of the country.53 The new central government faced immediate armed challenge from one faction of communist insurgents, and this was soon followed in 1949 by rebellion of the Karens in southeast Burma. Karen units in the Burma Army defected en masse. The fighting spread into Upper Burma, and other minority groups such as the Mon, the Karenni, the Pao and the Kachin rebelled. In Arakan in the northwest, insurgency by various communist groups, ethnic Rakhine and Mujahid separatists and militia gangs contributed to a collapse of law and order.54 Armed rebellion continued almost unabated until the cease-fire process, begun in 1989, discussed below.

After just over a decade of democracy, interrupted by a period of military 'care-taker' rule following a political crisis, the army seized power in 1962. It appears that prime motivations for the coup were indications by Shan State that it wished to exercise its constitutional right to secede, and moves by ethnic leaders and the Prime Minister, U Nu, to discuss possibilities for reforming the federal structure to redress some of the grievances of ethnic groups.

The army ruled by decree until 1974 through a Revolutionary Council of a few officers led by General Ne Win, who had been commander of the armed forces since 1949. Hopes of a negotiated settlement to what was essentially a civil war were largely extinguished after peace talks in 1963 were unsuccessful. These talks are the subject of controversy and divergent historical accounts. Ethnic organisations have claimed that the military sought only their surrender and refused to listen to their political demands.55 Following the breakdown of the talks the army's two-fold policy of centralising administration and crushing insurgency was continued. The Ne Win regime responded to the

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Hand in hand with centralisation came Burmanisation, the attempt to equate all cultures in Burma with Burman culture, ignoring or repressing inconvenient differences. Post-independence governments in Rangoon have tended to seek unity through the idea of a common Burmese identity shared by all the inhabitants of modern Burma. This has also been taken up by some Burman and foreign historians, who have sought to identify a unified Burman past, a view of history bitterly disputed by ethnic nationalists. Under Ne Win, schools were nationalised, teaching in ethnic languages was kept to a minimum and ethnic language newspapers were restricted to insignificant topics. Distribution of religious literature was also restricted and complaints made, for example, by government officials to pastors that the militant language of the Old Testament was an incitement to rebellion.

Throughout this time there were various groupings of armed opposition organisations, some of whom managed to find common ground in the formation of a broad-based alliance, the National Democratic Front, in 1976.
1988 and subsequently

During 1988 protests and demonstrations against the ruling military-controlled state party broke out and were bloodily suppressed. Of the many factors contributing to the uprising were Burma’s economic collapse, general political frustration, anger towards the military administration and resentment at the poor state of education. The protests were largely a Burman phenomenon, chiefly occurring in the urban centres. However, in the aftermath of the massacre an alliance was forged between the approximately 10 000 student and other mostly Burman protestors who fled to the ethnic-controlled border regions, and the ethnic armies who had been fighting for decades against the central government and military regime.

In 1988 the ruling regime also re-organised itself and dispensed with its state party. The following year the junta took advantage of a mutiny in the Burma Communist Party to initiate a cease-fire with the ethnic Wa, which began the trend for ethnic armed organisations to enter cease-fires. Currently all but two of the major ethnic groups have entered cease-fires, although one cease-fire collapsed in 1996. These cease-fire agreements do not address any of the political issues the cause of the long conflict. They don’t operate as autonomy regimes but as respite. Perhaps more than anything else they are a "recognition by ethnic leaderships that their peoples were exhausted from years of warfare." They do open the door for some international NGOs to work in ethnic areas, which had previously not been permitted, and allow the army to exploit resources in ethnic areas with some financial benefits awarded to ethnic organisations.

In 1990 growing international and domestic pressure for democratic reform led the military regime to hold multi-party elections, won overwhelmingly by the opposition National League for Democracy (NLD). Nineteen ethnic minority parties were also successful in having candidates elected. The junta justified its subsequent refusal to transfer power by claiming that this could only occur when a new Constitution had been drafted. The duty of the elected representatives, rather than to form government, was to draft the Constitution. The junta then established the National Convention, a forum for the drafting of principles for the new Constitution. However the elected representatives formed only a minority of delegates, the rest being military appointees. The proceedings of the Convention were strictly controlled, and it was mandatory for the Convention to approve several central principles, including that the military would be guaranteed a leading role in the future of the country.

The NLD boycotted the National Convention in 1995, and since then it has been rarely convened, abandoned by the junta, which has continued to draft its Constitution in private. A number of principles underlying the proposed Constitution have been published in state newspapers. It provides for a bicameral parliament, with a President (with military experience) as Head of State. The military will have a quota of seats in parliament. In relation to self-determination, "new ‘self-administered zones’ [will] be created for the Pao, Kokang, Palaung and Danu minorities in Shan State and the Naga in Sagaing Division, a larger self-administered division for the Wa, and special ‘participation rights’ for the smaller groups such as the Akha and Lahu, also in Shan State. By contrast, no such nationality representation [is] indicated for large minority groups outside the ethnic states, notably the more than one million Karen living in the
tern of anomalies that [have] troubled national government throughout the 20th century."63

Opposition organisations have also been considering the question of future constitutional arrangements, and one umbrella opposition group, the National Council of the Union of Burma, has prepared a first version of a draft federal Constitution, which provides for equal powers for all constituent states. The issue of which minorities will be granted states and the rights permitted the remaining minorities is but one thorny question in this area. Self-determination, secession and levels of autonomy promise to remain crucial issues in any future constitutional arrangements.

Burmanisation policies in this decade have continued, reflected, for example, in the regime's reliance on 'nationalist Buddhism' to undermine minorities and build 'national unity'. The ability to practice one's religion has a central place within self-determination. The fact that most Burmans are Buddhist provides the junta a useful means of undermining ethnic communities, through emphasis on Buddhism as a 'unifying force'. One commentator claims that the military junta has an implicit 'one nation, one race, one religion' ideology, "which is clear in all its dealings with ethnic and religious minorities". She cites, as examples, the fact that one of the duties and powers of the ministry created under the 1993 Development of Border Areas and National Races Law is "making arrangements for the promotion and propagation of the sasana [Buddhist religion] in the Development Areas", and that the regime has also created or revived Buddhist missionary universities, which "send out monks to proselytise, often with the assistance of military force, in ethnic minority areas."64

3 Conclusion

Burma's history is a highly complex story, and only a few introductory aspects have been discussed here. It is the premise of this paper that self-determination has played a central role in Burma's tortuous political and military development since at least British colonial times. The military's traditional unwillingness to recognise even the limited 'traditional' rights of minorities to religion, language and culture may itself have fuelled much of the separatist ire. The policy of the military administration to centralise has reduced the autonomy of ethnic groups, and increased the effects of Burmanisation.

On the scale discussed in the first section of this paper, Burma must rank as one of the world's least democratic or representative countries, exemplified by the junta's failure to honour the election results and the military's numerous gross violations of human rights, consistently condemned by the UN. The military's abuses are particularly directed towards members of many minorities. A number of ethnic minorities have maintained consistent claims to self-determination for decades, yet despite this, and the highly unrepresentative nature of the country, the prospect of international recognition of these claims to self-determination is currently quite inconceivable. The response to the situation of ethnic Albanians in Serbia last year, involving more or less united international action on a grand scale, provides an interesting contrasting model.
The military's proposed Constitution suggests that it recognises the need to grant some degree of self-determination to ethnic nationalities, although the lack of equality in ethnic relations that has haunted Burma is again reflected in the regime's proposal, which perpetuates historical patterns of inconsistency. Its provisions set up a hierarchy of self-determination, from which numerous ethnic groups appear to be excluded.

The answer to Burma's self-determination dilemma, if there is one, is obviously extremely complex and will require flexibility, compromise and goodwill. If one lesson can be learned from Burma's history, it is that any solution sought to be imposed by one group upon the others will fail.

Postscript

Since this article was written, the 56th session of the UN Commission on Human Rights adopted a resolution on the establishment of a new UN body, the Permanent Forum on Indigenous Issues (E/CN.4/2000/L.68). This body is to be established as part of the Economic and Social Council, serving as an advisory body to the Council, and discussing indigenous issues within the mandate of the Council relating to economic and social development, culture, the environment, education health and human rights. The future impact of this body on the issue of self-determination will be interesting to monitor.

Notes

* LLB., Legal Researcher, Burma Lawyers' Council, Bangkok
6. Hannum (see fn 4) p 28
7. These ‘guarantees’ for minority rights "were not inserted to redress earlier depredations by empires (despite such atrocities as the Armenian genocide in 1915-16), but rather to assuage and protect those "national" minorities whose claims to self-determination were not recognised by the victorious Great Powers": Hannum (see fn 4) pp 53-4
8. Heywood (see fn 5) pp 138-9
9. Hannum (see fn 4) pp 55-6
10. Hurst Hannum, Rethinking Self-Determination, 34 Va. J. Int. L. 1, at 3 (1993), reproduced in Steiner and Alston (see fn 1) at p 977
11. Hannum (see footnote 10, above) p 973
12. Hannum (see footnote 10, above) p 974
13. For example, the Indian government made the following reservation to the two covenants:
   With reference to article 1...the Government of the Republic of India declares that the words 'the right of self-determination' appearing in [those articles] apply only to the peoples under foreign domination and that those words do not apply to sovereign independent states or to a section of a people or nation - which is the essence of national integrity.
15. One commentator has pointed out that the Organisation of African Unity similarly decided to seat a POLISARO delegation in 1985, which "represented a statement that the people of the Western Sahara held rights against those actively denying their aspirations towards autonomy - notably Morocco.
18. Hannum (see fn 10) at p 973
19. Hannum (see fn 10) at p 976
20. Hannum (see fn 10) at p 976
21. Kirgis, in discussing his eight faces of self-determination, set out above, considers that while "clearly the right to be free from alien control is an established rule of international law, to me cannot categorically say the same about the other manifestations". Kirgis (see fn 3) at p 985
22. Hannum (see fn 4) p 49
23. Robertson (see fn 14) p 133
24. Such as the 1948 Genocide Convention, which outlawed serious crime committed "with an intention to destroy in whole or in part a national, ethnic, racial or religious group". The International Court of Justice issued a decision on genocide in 1951, declaring it to be a crime under customary international law, "confirming that such groups had at least a right to exist, maintainable against states which sought to splinter or extinguish them by physical force." Robertson (see fn 14) p 133-4
25. For example, under Article 27 of the International Covenant on Civil and Political Rights. Article 73 of the UN Charter states that those Member States which administer territories inhabited by non-autonomous populations have the duty to provide the necessary conditions for their economic, social and political development. The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities (GA Res. 47/135) also sets out duties for states in relation to such matters as minority languages, culture, education and political and economic rights.
26. Rosalyn Higgins in Catherine Brolmann, R. Lefeber & M. Zieck (eds.), PerilesandMinorities inInternational Law29 (1993), at 30, reproduced in Steiner and Alston (see fn 1) at pp 989-990
27. A good example is given by Robertson (see fn 14) at p 140: "When the Grand Captain of the Mikmaq tribe complained that the Canadian government was denying his members their Article 1 right to self-determination (they wanted to form an independent state), rather than reject his argument, the [Human Rights Committee] refused to hear it, on the ground that this right belongs not to individuals as a group, but to 'peoples.'"
28. Hannum (see fn 4) p 72
29. Robertson (see fn 14) p 144
30. Hannum (see fn 4) p 46
31. For example, the international reaction to the break-up of the Soviet Union, the delayed recognition of the former Yugoslavia republics, the UN's avoidance of taking a stand on the secession of East Pakistan (Bangladesh) from Pakistan and the condemnation by the...
Security Council of the proclamation of a Republic of Northern Cyprus. For further discussion, see generally Christian Tomuschat, *Self-determination in a Post-Colonial World* in Tomuschat (ed.), *Modern Law of Self-Determination* 1 (1993), at 2, reproduced in Steiner and Alston (see fn 1) at p 97; and Fox (see fn 15).

32. Kirgis (see fn 3) at p 984. Similarly: "exceptionally, minorities may be entitled to secede if their oppression is of a duration and magnitude that they are suffering gross violations with no prospect of relief or remedy." Higgins (see fn 26), at p 1011.

33. Robertson (see fn 14) p 143

34. Hannum (see fn 4) p 49


36. Smith (see fn 35) pp 42-3

37. Smith (see fn 35) p 45


39. Smith (see fn 35) p 79

40. Smith (see fn 35) p 72


42. Frontier Areas Committee of Enquiry Report, reproduced in Weller (ed), (see fn 38) p 27

43. Smith (see fn 35) p 84

44. Frontier Areas Committee of Enquiry Report (see fn 42), p 27

45. Frontier Areas Committee of Enquiry Report (see fn 42), p 38

46. There is evidence to suggest that the Burman independence party, the AFPFL, was able to largely dictate proceedings of the Committee to their advantage and ensure that voices opposed to their own were not presented in a united fashion, see Smith (fn 35) p 84.

47. Silverstein (see fn 38), p 2

48. Smith (see fn 35) p 79

49. s 201

50. s 178

51. ss 198-198

52. Smith (see fn 35) p 83

53. Which may to some way towards explaining the siege mentality evident within the military leadership.

54. Smith (see fn 35) pp 27-8

55. Smith (see fn 35) p 206-212

56. Smith (see fn 35) p 199


58. Smith (see fn 35) p 35

59. Smith (see fn 35) p 36

60. Smith (see fn 35) p 205

61. For example, use of ethnic languages in schools is strictly controlled, as are the curricula of ethnic schools. Burman troops enter ethnic territory frequently, and there are restrictions on possession of arms by ethnic groups.

62. Mark Purcell, *Axe Handles or Willing Minions?: International NGOs in Burma*, in BCN / TNI (eds.) (see fn 57) pp 89-90

63. Smith (see fn 35) pp 428-9


65. A tendency interestingly also evident in many of the opposition organisations