

## REVIEW ESSAYS

*CREATING NEW STATES: THEORY AND PRACTICE OF SECESSION* BY ALEKSANDAR PAVKOVIĆ WITH PETER RADAN (HAMPSHIRE, UK: ASHGATE PUBLISHING, 2007) 292 PAGES. PRICE £55.00 (HARDCOVER) ISBN 9780754671633.

### VIOLENT AND NON-VIOLENT SECESSIONS IN THE CONTEMPORARY WORLD: THEIR CAUSES, JUSTIFICATIONS AND LEGALITY

#### I OBJECTIVE AND PARAMETERS

Whereas in the 1970s and 1980s many scholars and politicians considered the creation of new states to belong to the post-World War I era of dismantling conquered and undemocratic multinational empires, and to the phase of decolonisation, recent history has shown that the struggle for independent statehood by communities is not something of the past. In many cases this objective is sought to be realised through secession. The violent break-up of the Socialist Federal Republic of Yugoslavia ('SFRY') and the dissolution of the Union of Soviet Socialist Republics fuelled latent, as well as more open, aspirations to secession elsewhere. The underlying forces of the process are often complex, and the arguments used in support of it will sometimes be qualified as irrational, even by the neutral observer. Yet the number of past and current struggles for secession call for a deeper understanding of the emergence and development of these forces, the arguments used, and justifications sought, if only because many attempts at secession are accompanied by violence and widespread human suffering.

This book is an introductory study into the concept, processes and theories of secession.<sup>1</sup> The study aims at explaining the factors which lead to (attempts at) secession, and pays particular attention to those factors which appear to be influential upon whether a secession is carried out under either violent or peaceful conditions. The authors explicitly note that they do not aim to find a comprehensive and/or conclusive answer to the question of why some secessions are violent, but rather they desire to increase the understanding of why violence occurred in the context of some secessions in the past and why violence may accompany some attempts at secession in the future.<sup>2</sup> Accordingly, Part I, consisting of Chapters 2–5, discusses the practice of secession. Chapter 2 examines the context in which secessionist movements arise, and how they gather support, and Chapters 3 and 4 examine six case studies: three cases of peaceful (attempts at) secession and three cases of violent (attempts at) secession. By comparing these two sets of secessions, the authors then aim to identify the factors that may explain why multiple secessions and attempts at secession in the context of the former USSR and the former Yugoslavia —

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<sup>1</sup> Aleksandar Pavković with Peter Radan, *Creating New States: Theory and Practice of Secession* (2007) 3.

<sup>2</sup> *Ibid* 26.

which, led to the dissolution of these two states — were characterised by, respectively, the absence of violence or protracted war and violence (Chapter 5).

Part II analyses secession from a more theoretical point of view. It elaborates upon explanatory theories of secession (Chapter 6), normative theories of secession (Chapter 7) and the legality of secession under national and international law (Chapter 8). The final chapter, Chapter 9, discusses the question of why some groups wish to secede, even in situations where remaining in the parent state would arguably be more beneficial to the group.

The two Parts are preceded by an introductory chapter, which aims to introduce and explain some basic concepts. The authors briefly discuss the concept of secession as well as concepts relevant to secession, such as sovereignty, recognition of statehood, transfer of jurisdiction and the principle of self-determination. Furthermore, they explain that the study is confined to the analysis of secession in the postcolonial context, because secession in the context of decolonisation, especially in the post-World War II era, was regarded as relatively uncontroversial, and because decolonisation is, in practical terms, no longer a significant political and legal issue.<sup>3</sup> One will also note that the case studies discussed in this study are mainly concerned with (attempts at) secession from federal states, and this is, according to the authors, not without reason. They note that the combination of administrative units, nationalist ideology, the right of self-determination and a national group's (or elite's) dissatisfaction with a limited sovereignty arrangement is a potentially explosive mix of ingredients, which explains why mainly multinational (federated) states have been the principal target of struggles for secession in the 20<sup>th</sup> and 21<sup>st</sup> centuries.<sup>4</sup> The study defines a multinational state in a narrow sense: a state in which national groups have separate political representation and can thus control political institutions.<sup>5</sup> Therefore the United States and Germany, for example, do not come within the scope of this definition; Canada, the former Yugoslavia and the former USSR do.

## II SECESSION: PRACTICE

In Chapter 2, the authors describe some general features of secessions. According to them, secessions (whether successful or unsuccessful) feature four basic elements:

1 a bounded territory within an existing state,

2 a population within that territory,

and a *political movement* targeting (and supported by) that population which:

3 has proclaimed the independence of a new state based on that territory and

4 has attempted to gain recognition of that independence by other states and international organizations.<sup>6</sup>

But there are other elements too, which feature in most cases of (attempts at) secession. The members of a secessionist movement share a common national

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<sup>3</sup> Ibid 2, 22–3.

<sup>4</sup> Ibid 13–14, 17–19.

<sup>5</sup> Ibid 14.

<sup>6</sup> Ibid 33 (emphasis in original), see also 34–6.

identity, and, if not, they share a common interest or common injustices suffered (or both).<sup>7</sup> Many, but not all, secessions are preceded by a huge and sometimes prolonged effort by the secessionist movement to mobilise the ‘target population’ through emphasising, using, and sometimes shaping and modifying this shared element to gather widespread and necessary support for the secession cause.<sup>8</sup> Most secessionist movements try to achieve this mobilisation and persuasion of the population by referring, in one way or another, to a set of grievances to which the population and its members are, arguably, exposed in the parent state. Depending on the context, the grievances put forward concern unequal distribution of power and/or economic and cultural resources (discrimination), unjust or harmful acts perpetrated against the population and its members (for example, human rights violations), and alien rule (violation of the right to self-determination interpreted from the perspective of nationalist ideology, that is, the right to have one’s own state).<sup>9</sup>

Moreover, the secessionist movement and its leaders will attempt to persuade the target population in such a way that the members abandon both their allegiance to the parent state and the obedience of its officials and laws — as a result of which, the parent state should lose control over the population and the territory. This is generally achieved through the rhetoric of ‘distancing’, for example, through ‘estrangement’ from the parent state.<sup>10</sup> The authors note that the ‘distancing’ rhetoric is also aimed at mobilising the population to act through, for instance, peaceful demonstrations, strikes, the damaging of state symbols, and, if necessary, through (at times indiscriminate) violence.<sup>11</sup> Through this mobilisation, the secessionist leaders show that they have the capacity to command and control the population. This is an instrument for convincing the state authorities to hand over control of the territory and its population, as maintaining state control would, in particular with regard to the suppression of violent acts, be increasingly costly over time. However, the authors note that the costs-infliction effect is not the only reason why secessionist movements are at times inclined to resort to violence. Apart from ideological justifications, the occurrence of violence can be explained in terms of a response to particular circumstances, such as the violent repression of the secessionist movement by the state authorities.<sup>12</sup> Of course, secessionists may also provoke the use of force by the central state authorities with the aim of receiving outside military assistance and/or stimulating outside military intervention in favour of the secession.<sup>13</sup> The authors delve into deeper ground in the following chapters, explaining possible causes for the presence or absence of violence in secessionist conflicts.

In Chapters 3 and 4, the authors analyse the causes for two peaceful secessions (Norway and Slovakia), one peaceful attempt at secession (Quebec), one violent secession (Bangladesh), and two violent attempts at secession (Biafra

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<sup>7</sup> Ibid 43–4.

<sup>8</sup> Ibid 45–7.

<sup>9</sup> Ibid 47–50.

<sup>10</sup> Ibid 50.

<sup>11</sup> Ibid 53–5.

<sup>12</sup> Ibid 55–6.

<sup>13</sup> Ibid 58.

and Chechnya). Regarding each of these cases, they also address the question of why the first three secessions mentioned were peaceful and the latter three were characterised by the outbreak of violence. The analysis is preceded by a working hypothesis which holds that the presence of one or more of the following factors is likely to lead to violence:

- 1 The readiness (and capacity) of the host state to use force to prevent secession and suppress the secessionist movement.
- 2 The readiness of the secessionist movement to use force in the pursuit of its secessionist goals ...
- 3 The opposition by a territorially concentrated group within the seceding state to secession of their territory from the host state.
- 4 The existence of armed groups outside the control of the principal secessionist authorities and of the host state.<sup>14</sup>

*A contrario*, the absence of all of these factors would mean that violence is not likely to break out. The authors stress that the presence of either the third or the fourth factor is not, by and of itself, determinative of an outbreak of violence.<sup>15</sup> In that respect, another factor would be of fundamental importance, namely the strategies that the parties involved used to avoid violent conflict.<sup>16</sup> This point is intimately connected with their hypothesis that the presence of either the third and/or the fourth conditions in combination with the remaining conditions would be causally sufficient for an outbreak of violence.<sup>17</sup>

According to the authors, the abovementioned hypothesis appears to be confirmed by the three case studies of peaceful secessions. The principal feature of these cases is that the use of force was either seen as an unsuitable or inappropriate means for realising the desired ends by the parties involved (Norway, Quebec), or was simply not an option because of the lack of sufficient resources (Czechoslovakia).<sup>18</sup> The reasons for the abovementioned peaceful (attempts at) secession are, according to the authors, formed by a combination of features: the institutional structure of the states concerned, which provided for a substantial degree of powers regarding political and cultural matters for all three secessionist entities;<sup>19</sup> the presence of a grievance concerning an (alleged) unequal distribution of power and/or economic and cultural resources; and the rejection by the respective central governments of the demand for equal treatment.<sup>20</sup>

As to the violent (attempts at) secession(s) discussed, the authors argue that in these cases all conditions were fulfilled, apart from the third condition in the cases of Biafra and Chechnya.<sup>21</sup> However, they subsequently note that although the presence of the first and second conditions were causally necessary for the outbreak of violence, they were not causally sufficient for it.<sup>22</sup> In that respect,

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<sup>14</sup> Ibid 67.

<sup>15</sup> Ibid 85–6.

<sup>16</sup> Ibid 65, 87.

<sup>17</sup> Ibid 95–6.

<sup>18</sup> Ibid 86 (fn 11), 87.

<sup>19</sup> Ibid 88.

<sup>20</sup> Ibid 90–1.

<sup>21</sup> Ibid 119.

<sup>22</sup> Ibid 119–20.

they point to important additional factors, such as outside military assistance in the cases of Biafra and Bangladesh; widespread violence in the parent states prior to the assumption of power by the secessionists in the seceding regions; the breakdown of negotiations or the repudiation of an already concluded agreement by one of the parties; and the lack of public political accountability of, and personal animosity between, the leaders of both the secessionists and the parent state.<sup>23</sup> Finally, the authors point to a number of specific (non-violent) features which triggered the different secessions discussed and which vary between these different cases, leading them to state that it is implausible that one would be able to identify a type of event, or set of events, that, under the same general conditions, would lead groups to attempt to secede.<sup>24</sup>

Chapter 5 of the study analyses the causes for the dissolution of the USSR and for the secessions in the context of the break-up of the SFRY. The authors also attempt to address here the question of why the secessions in the context of the break-up of the SFRY were violent whereas the dissolution of the USSR was mostly a peaceful affair. In addressing these cases, the authors build on the insights gained from their analysis in Chapters 3 and 4. However, in contrast to the analysis of the cases in the previous chapters, the authors do not apply the hypothesis mentioned above to these two cases. The reason for this remains unclear, but it may be grounded in the authors' different categorisation of the cases at hand. Secession in these cases would have to be qualified either as 'sequential' (referring to the initial secessions) or as 'recursive' (secession attempts which occurred within the territory of the initially seceding entity).<sup>25</sup> In that context the authors put particular emphasis on the question of what *triggered* the series of sequential secessions and recursive secessions.<sup>26</sup> Admittedly, in that respect, these cases are different from, for instance, Bangladesh or Biafra, but this appears to be primarily due to the complex ethnic composition of the federal states under discussion rather than being a different *category* of secessions.

The authors note that the sequential secessions of the USSR were generally peaceful, whereas the recursive secessions in Azerbaijan and Georgia were violent.<sup>27</sup> In the context of the SFRY, almost all in the series of sequential secessions (apart from the case of Macedonia) and all of the recursive secessions (in Croatia and Bosnia-Herzegovina) were violent.<sup>28</sup> The authors subsequently convincingly explain these differences.<sup>29</sup> An important difference between the events in the USSR and the SFRY, as far as the sequential secessions are concerned, would be the fact that at the time of the first of the series of sequential secessions, the central authorities in the USSR were weakened and had an uncertain command over the armed forces.<sup>30</sup> Still, any of the potential seceding entities knew that a war against the federal army would be lost.<sup>31</sup>

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<sup>23</sup> Ibid 121–2.

<sup>24</sup> Ibid 123–4.

<sup>25</sup> Ibid 129.

<sup>26</sup> Ibid 157.

<sup>27</sup> Ibid 65, 138, 141–3.

<sup>28</sup> Ibid 65, 141–3.

<sup>29</sup> Ibid 153–5.

<sup>30</sup> Ibid 153.

<sup>31</sup> Ibid 141.

Therefore, a different tactic for neutralising the federal army was followed. Through assisting the establishment of secessionist movements in other Union Republics, the initial seceding entities (the Baltic States) made it virtually impossible for the central government to regain control over all these areas. Hence the virtual absence of violence in these cases.<sup>32</sup> The situation in the SFRY was different from the Soviet case, as the Yugoslav federal army was capable of operating even without explicit authorisation from the central government. In this case, the neutralisation of the federal army would have to come from third states or international organisations, for example through diplomatic or military intervention in support of the seceding entities; something that did eventually happen, as is well-known.<sup>33</sup> Another important variable for the outbreak of violence is formed by the *capacity* to use force. The Baltic governments had very limited control over the primarily small police forces (comparable to the Slovak case mentioned above), whereas in Slovenia and Croatia, the secessionist governments controlled large, although lightly armed, territorial defence forces, which were able to secure the clandestine import of arms from outside and were ready to use force.<sup>34</sup>

As to the reasons for the secessions of the first group of entities (Latvia, Estonia, Lithuania, Slovenia and Croatia), the authors refer to the fact that in all these cases, as in the cases discussed in Chapters 3 and 4, there was a distinct national group differing in their language and culture from the other groups in the parent state.<sup>35</sup> In addition, in almost all of these cases (as in the cases of Quebec and Chechnya) there existed a long history of resistance to the parent state and a high organisational capacity of nationalist opposition groups.<sup>36</sup> However, they point at a marked difference in comparison to the other cases discussed, in that these five federal republics were economically the most developed regions in their respective parent states. This would exclude the possibility of economic grievances, leading them to conclude that these entities probably seceded to preserve and enhance their economic advantage.<sup>37</sup>

At this point a brief remark is in order. When one takes into account the historical events leading up to the secessions of Slovenia and Croatia (which are also briefly described by the authors),<sup>38</sup> this conclusion comes as bit of a surprise and appears to be oversimplified. Serbian aspirations to dominate within the state were covertly expressed even before the coming to power of the nationalist leader Slobodan Milošević.<sup>39</sup> Soon after he took office, the autonomous status of both the provinces of Kosovo and Vojvodina were virtually abolished in the new Serbian Constitution. Around the same period, Serbian demands for the political unification of Serbia, by all the Serbs in Yugoslavia, became stronger, and were publicly expressed in mass rallies by Serbs in different parts of the state. As a result of these events, and in combination with the coming to power of a

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<sup>32</sup> Ibid 153–4.

<sup>33</sup> Ibid 154.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid 155–6.

<sup>36</sup> Ibid 122–4, 159, 164–5.

<sup>37</sup> Ibid 156–7.

<sup>38</sup> Ibid 146–8.

<sup>39</sup> See generally Branka Magaš, *The Destruction of Yugoslavia: Tracking the Break-Up 1980–1992* (1993) 49.

pro-Serbian oriented government in Montenegro, both Slovenia and Croatia feared Serbian domination (a 'Great Serbia').<sup>40</sup> In addition to these developments, both republics had regularly expressed their dissatisfaction with the central government's policy of welfare distribution, as they considered that the costs related to this policy were at the expense of the relatively wealthy and developed republics, themselves in particular, leaving them feeling exploited.<sup>41</sup> The latter perception was tightly linked to the fact that Slovenes and Croats were seriously under-represented and the Serbs over-represented in the federal civil service and the army.<sup>42</sup> In sum, the two Yugoslav Republics put forward grievances concerning unequal distribution of power and economic resources, and, in that respect, did not differ that much from the other cases discussed in the study.

The authors conclude their analysis of the different cases of secession by listing four-often related sources of mass violence in secessionist conflict:

- 1 A host state's attempt to gain control over the secessionist territory by military force.
- 2 Secessionists' attempts to challenge the host state's control by a campaign of violence.
- 3 Conflict among ethnic or national groups settled on the same territory.
- 4 Secessionists' attempts to provoke international intervention in the secessionist conflict.<sup>43</sup>

It appears that most of these factors were indeed present in most of the secessionist cases involving mass violence. Their absence or presence, however, is in most cases determined by factors particular to the case at hand, and thus do not give much guidance as to how to prevent or minimise violence in all possible future cases. But, admittedly, the reaching of such a general conclusion was not the objective of the study, as was noted above.

### III SECESSION: THEORETICAL FOUNDATIONS

Part II of the study commences with a discussion of the explanatory theories of secession by, amongst others, Smith, Horowitz, Hechter and Wood. Not surprisingly, the authors come to the conclusion that, at present, there does not exist a theory which is capable of offering a universal causal explanation of *all*

<sup>40</sup> See Pavković and Radan, above n 1, 144–6.

<sup>41</sup> Vesna Bojičić, 'The Disintegration of Yugoslavia: Causes and Consequences of Dynamic Inefficiency in Semi-Command Economies' in David A Dyker and Ivan Vejvoda (eds), *Yugoslavia and After: A Study in Fragmentation, Despair and Rebirth* (1996) 28, 43; see also Harold Lydall, *Yugoslavia in Crisis* (1989) 192–3.

<sup>42</sup> See Steven L Burg, *Conflict and Cohesion in Socialist Yugoslavia: Political Decision Making since 1966* (1983) 113: For instance, in 1969, while Serbs constituted some 40 per cent of the total population of Yugoslavia, 72 per cent of the professional staff in the state administration and 83 per cent of the professional staff in governmental commissions and institutes, were made up of Serbs. With respect to the judicial and prosecutory sector, 64 per cent of the leading officers were Serbs. No significant changes occurred with regard to these ratios in subsequent years. On the level of the federal republics themselves, a striking example is formed by the case of Croatia, where ethnic Serbs constituted some 12 per cent of the total population. On 13 May 1990, the ethnic distribution of persons employed in the Croatian police force was as follows: 16 054 employees of which 8130 Croats (50.5 per cent), 4696 Serbs (29.2 per cent), 2568 'Yugoslavs' (16 per cent) and 660 others (4.1 per cent). These figures appeared in *Vjesnik* (Zagreb, Croatia) 11 March 1991, 5.

<sup>43</sup> Pavković and Radan, above n 1, 163.

*past* secessions; neither does there exist an all-embracing theory which is able to predict, with any level of certainty, *future* secessions, given the numerous (sometimes unknown) variables involved.<sup>44</sup> As to normative (justifying) theories of secession, all of which conceive secession as a (moral) right under particular circumstances, both choice theories (such as those elaborated by Rothbard, Beran, Wellman, Philpott and Miller) and remedialist theories (set out by, for example, Birch, Buchanan and Tamir) are discussed. The authors conclude that these theories either cannot justify all the secessions discussed in the study, or fail to explain why some of these ‘justified’ secessions were not recognised by the international community.<sup>45</sup>

However, the authors suggest an alternative theory: ‘the principle of no irreparable harm’.<sup>46</sup> This concerns a normative assessment of secession, not in the sense of a moral right but in the sense of the moral permissibility of a secession. Under this principle, a secession would be morally permissible if the secessionists, in the pursuit of their objective, do not cause irreparable harm to, or evict, non-threatening non-combatants.<sup>47</sup> As such, it would be a guiding principle for the recognition of secessions. Other conditions could be added, such as the principle of free choice. Admittedly the principle of no irreparable harm, if adopted on the international plane, could, at least theoretically, prevent some excesses of the use of force in secessions. The practical application of this principle appears, however, to be difficult. Apart from definitional problems regarding the notions of ‘irreparable harm’, ‘non-threatening’ and ‘non-combatants’, the authors do not make it entirely clear whether the secessionist group should have first been exposed to irreparable harm inflicted by the parent state. If so, the principle would require, as a *conditio sine qua non*, a prior (indiscriminate) use of force by the parent state, which may encourage secessionist movements to create this condition themselves, both of which can hardly be regarded as conducive to reducing violence in secessions. Moreover, the principle would permit attempts at (and the recognition of) secession by *any* group for *any* reason. As such the principle would be too permissive and therefore, given the fundamental importance attached to the principle of territorial integrity of states, not likely to be adopted by the international community in the foreseeable future.

#### IV SECESSION AND THE LAW

In Chapter 8, the legality of secession is elaborated upon from the perspective of both national and international law. The principal focus here is on international law, as in the great majority of national jurisdictions there does not appear to exist a fundamental legal problem if secession occurs within the parameters of a mutually agreed setting.<sup>48</sup> As regards the existence of a right of unilateral secession under international law, the authors argue that such a right

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<sup>44</sup> Ibid 190.

<sup>45</sup> Ibid 205.

<sup>46</sup> Ibid 214.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid 221. The authors discuss the matter in the context of the US, the former Yugoslavia and Canada: at 221–32.



can be inferred<sup>49</sup> from para 7 of Principle 5 of the 1970 *Friendly Relations Declaration*<sup>50</sup> and the almost identical art 1 of the 1995 *Declaration on the Occasion of the Fiftieth Anniversary of the United Nations*,<sup>51</sup> both of which were adopted by the United Nations General Assembly. The authors state that:

the 1970 UN Declaration on Friendly Relations appears to codify a limited remedial right of secession which no normative theory has elaborated — the right which protects representation of the ‘whole people’ in the host state’s government.<sup>52</sup>

This argument, in fact, points to the conversion of a right of self-determination which is implemented within the state (internal self-determination) into a right of self-determination which is implemented without the state (external self-determination). One may share the view that a right of unilateral secession does exist under international law when a state seriously violates either the right of internal self-determination of a people within its jurisdiction, or the human rights of the members of that people; and when this people must be deemed to have exhausted all realistic remedies to implement its right of internal self-determination. However, the fact that the authors’ argumentation for the existence of such an international legal right is solely based on the non-binding General Assembly resolutions mentioned above, and on a sole reference to the ruling of the Supreme Court of Canada<sup>53</sup> in the *Quebec Case*,<sup>54</sup> is rather unconvincing. It should be kept in mind that the authoritative *Friendly Relations Declaration*<sup>55</sup> — aimed at interpreting fundamental principles of international law in accordance with the *Charter of the United Nations* — is formulated in terms of obligations and rights of states in their mutual relations and did not aim to address the issue of the existence of a right to unilateral secession of peoples, let alone aim to codify it.<sup>56</sup> Therefore, a convincing argument for the existence of such a right would require more, and would at least need to include references to state practice (such as international recognition of claims to such a right under circumstances referred to in the resolutions). Moreover, it would also require some elaboration of the circumstances under which a state must be deemed to comply with the right of internal self-determination. This is because the phrase ‘a Government representing the whole people belonging to the territory without distinction of any kind’<sup>57</sup>

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<sup>49</sup> Ibid 235–7.

<sup>50</sup> *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*, GA Res 2625 (XXV), UN GAOR, 6<sup>th</sup> Comm, 25<sup>th</sup> sess, 1883<sup>rd</sup> plen mtg, UN Doc A/RES/2625 (XXV) (24 October 1970) (*‘Friendly Relations Declaration’*).

<sup>51</sup> GA Res 50/6, UN GAOR, 50<sup>th</sup> sess, 40<sup>th</sup> plen mtg, Agenda Item 29, UN Doc A/RES/50/6 (24 October 1995) (*‘Fiftieth Anniversary Declaration’*).

<sup>52</sup> Pavković and Radan, above n 1, 213.

<sup>53</sup> Ibid 237.

<sup>54</sup> *Reference re Secession of Quebec* [1998] 2 SCR 217.

<sup>55</sup> *Friendly Relations Declaration*, above n 50.

<sup>56</sup> The latter remark is equally applicable to the *Fiftieth Anniversary Declaration*, above n 51. See David Raič, *Statehood and the Law of Self-Determination* (2002) 316–24.

<sup>57</sup> *Fiftieth Anniversary Declaration*, above n 51, art 1. The amendment of ‘without distinction of any kind’ to the formula ‘without distinction as to race, creed or colour’ in para 7 of Principle 5 of the *Friendly Relations Declaration*, above n 50, already appeared in the

arguably includes the Western model of representative democratic government, but must, given the concept of *self-determination*, necessarily include other forms of government (including, for instance, territorial autonomy) which are freely chosen and considered to be representative by the people concerned.

A further point of criticism concerns the authors' argument that both the Biafran attempt at secession and the secession by Bangladesh could be deemed illegal, as they did not meet the condition stated<sup>58</sup> in the *Friendly Relations Declaration*.<sup>59</sup> As to the former, they

argue that the Ibo-dominated government of the Eastern Region attempted to prevent the Nigerian government from establishing 'a government representing the whole people ...' by refusing to participate in the Nigerian government and rejecting any further devolution of power and legislative competencies to minority groups.<sup>60</sup>

This argument is difficult to accept. After repeated massacres of Ibos with respect to which the central Nigerian government did not intervene, it is certainly understandable that the Ibos were mistrustful of the central Nigerian government, feeling little incentive to cooperate with it as a result. It is even questionable whether, under these conditions, the Ibos were still legally obliged to cooperate. Moreover, the devolution of competencies (for example, the central government's unilateral decision in May 1967 to divide Nigeria into twelve provinces) was in clear violation of the right of (internal) self-determination of the Ibos, as they were never consulted regarding this decision.

Regarding the case of Bangladesh, the authors argue that the military government attempted to establish a central government which would represent the Bengali population, but the Bengali leaders kept on instigating a (con)federal framework which would have minimised the competencies of the central government and thus, so they argue, made it less representative.<sup>61</sup> Also, in this case it is difficult to see how the Bengali position would be in violation of the principle laid down in the *Friendly Relations Declaration*,<sup>62</sup> since the Bengalis were under-represented at every official level in Pakistan, their political leaders imprisoned from 1967–69; the largest political party of West Pakistan demanded the right of veto regarding federal decision-making, whereas it won only 25 per cent of the seats in Parliament in the 1971 elections; and the inaugural session of the National Assembly (in which the Bengali Awami League would have had a majority as a result of said elections) was indefinitely postponed by president Yahya Khan (a West Pakistani). It is not clear how these could be regarded as constructive efforts to create a representative central government. It is also unclear why a confederal government would be, by definition, less representative (as opposed to less powerful) than, for instance, a federal government. In sum, even for an introductory study into the creation of states through secession, this part of the study generates more questions than answers.

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*Vienna Declaration and Programme of Action: Report of the World Conference on Human Rights*, UN Doc A/CONF.157/23 (12 July 1993) [2].

<sup>58</sup> Pavković and Radan, above n 1, 127.

<sup>59</sup> *Friendly Relations Declaration*, above n 50, Principle 5.

<sup>60</sup> Pavković and Radan, above n 1, 127.

<sup>61</sup> *Ibid.*

<sup>62</sup> *Friendly Relations Declaration*, above n 50, Principle 5.

## V SECESSION: AT ANY PRICE?

In the final chapter, the authors outline the benefits of sovereign, territorially-based statehood that form a motivation for secessionist leaders and/or their target populations to secede from their parent state. The benefits of political independence are sometimes regarded as outweighing foreseeable and substantial economical disadvantages and/or human suffering, even in cases where serious threats to the existence of the seceding group do not exist.<sup>63</sup> As a result, the authors state that in a world order that is based on the concept of territorial sovereignty, attempts at secession will not vanish.<sup>64</sup> And, although in liberal democratic states, such as in Canada and the former Czechoslovakia, the attempts at secession and the responses by the parent state were constrained by the presence of liberal democratic principles and institutions (the presence of which appears to be regarded by the authors as a necessary, but not a sufficient, condition for preventing the outbreak of violence in such circumstances), the very fact that numerous states lack these principles and institutions means that many more future attempts at secession will be accompanied by violence.<sup>65</sup>

## VI DEFINITIONAL ISSUES AND THE PREDICTION OF THE FUTURE

Although a number of aspects of this study have been flagged and briefly commented upon in the sections above, some final remarks must be made. Perhaps the most pertinent one concerns the authors' use of, in some respects a rather broad and, in other respects a very limited definition of secession — 'the creation of a new state by the withdrawal of a territory and its population where that territory was previously part of an existing state.'<sup>66</sup> This definition is questionable. The broadness of its scope has significant consequences, because it has led the authors to include cases in their study which are not qualified as examples of (attempts at) secession under international law.<sup>67</sup> On the other hand, the restrictive element of the definition would lead to the exclusion of cases of (attempts at) secession which would be qualified as examples of secession under international law.

The main problems of the definition used are, therefore, threefold: the first of which is concerned with the restrictive element in the definition, and the second and third of which are concerned with the expansive elements of the definition. First, the assertion that separation must lead to the establishment of an *independent state* in order to qualify as secession cannot be maintained. The concept of external self-determination is a mode of implementation of the right of self-determination of peoples through: (1) 'The establishment of a sovereign and independent State', (2) 'the free association or integration with an independent State' or (3) 'the emergence into any other political status freely determined by a people'.<sup>68</sup> Secession is, in addition to dissolution and union or

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<sup>63</sup> Pavković and Radan, above n 1, 274–8.

<sup>64</sup> Ibid 255–6.

<sup>65</sup> Ibid 252–3.

<sup>66</sup> Ibid 5.

<sup>67</sup> Ibid 6–8.

<sup>68</sup> *Friendly Relations Declaration*, above n 50, Principle 5. These options were already mentioned in *Principles Which Should Guide Members in Determining Whether or Not an Obligation Exists to Transmit the Information Called for under Article 73e of the Charter*,

merger, a *means* by which external self-determination may be exercised. As a result, secession may lead to different forms of territorial status freely chosen by the people concerned, in *addition* to independent statehood.<sup>69</sup> Indeed, this is the essence of the right of *self-determination*.<sup>70</sup> The authors' argument that the result of union or merger (option 2 above) is in fact concerned with the transfer of territory from one state to another rather than with secession<sup>71</sup> is missing the point. The formal transfer of territory only applies to situations in which the state as such would freely renounce its title to part of its territory by agreement with another state (*volenti non fit injuria*), whereas union or merger is concerned with situations in which the people (or their government) inhabiting a particular territory formerly belonging to the parent state choose to integrate this territory into another state.<sup>72</sup> The latter is thus concerned with the right of external self-determination of peoples (possibly exercised through secession) whereas the former is concerned with the sovereign rights of states regarding their territory, which, it must be noted, may not be exercised in violation of the right of self-determination (for example, the transfer of territory without the consent of the people concerned).

The second element of the definition which cannot be maintained is the omission of the adjective 'unilateral' with regard to withdrawal. Secession as a legal qualification of a given set of facts is concerned with the *unilateral* withdrawal of territory from the parent state, which implies the opposition (not necessarily violent in character) by the parent state to the secession.<sup>73</sup> Those cases in which the parent state gives its (either explicit or tacit and either prior or subsequent) consent with regard to the separation (as in the case of Slovenia), are generally legally qualified as cases of devolution (as a result of which an exclusive title to the territory in question is transferred by the parent state) rather

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GA Res 1541 (XV), UN GAOR, 15<sup>th</sup> sess, 948<sup>th</sup> plen mtg, UN Doc A/RES/1541 (XV) (15 December 1960) Principle VI. The fact that these options have been repeated in subsequent UN resolutions, such as the *Friendly Relations Declaration*, which were not restricted to, or principally concerned with, cases of decolonisation, constitutes compelling evidence that external self-determination (as well as the options of implementing it) extends beyond cases of decolonisation. Indeed, the fact that in the era of decolonisation the right of self-determination was linked to colonial territories should not be interpreted as a limitation of the scope of the right *rationae personae*, but as an application of universal law *ad casum*. This does not mean, however, that this conclusion is applicable *mutatis mutandis* to the *means* through which external self-determination can be exercised.

<sup>69</sup> See, eg, Christine Haverland, 'Secession' in Rudolf Bernhardt (ed), *Encyclopedia of Public International Law* (1987) vol 10, 384, 384; Tom M Franck, 'Postmodern Tribalism and the Right to Secession' in Catherine Brölmann, René Lefeber and Marjoleine Zieck (eds), *Peoples and Minorities in International Law* (1993) 3, 4. See also Michla Pomerance, *Self-Determination in Law and Practice: The New Doctrine in the United Nations* (1982), 25.

<sup>70</sup> In this context, reference is often made to the so-called 'free choice principle': see *Western Sahara (Advisory Opinion)* [1975] ICJ Rep 12, 31–3.

<sup>71</sup> Pavković and Radan, above n 1, 6.

<sup>72</sup> *Ibid* 9.

<sup>73</sup> See, eg, James Crawford, *The Creation of States in International Law* (2006) 375; Krystyna Marek, *Identity and Continuity of States in Public International Law* (1955) 62. Also, the very wording of para 7 of Principle 5 of the *Friendly Relations Declaration*, above n 50, which refers to 'action which would dismember or impair, totally or in part, the territorial integrity ... of sovereign and independent States', makes clear that third-state action in support of a secessionist movement that aims to secede *unilaterally* from a state which possesses a representative government is unlawful.

than secession (in which case the exclusive title to the territory is claimed by the secessionists, as in the case of Croatia, Chechnya and Abkhazia).<sup>74</sup> In furtherance of the deliberate choice to omit the word ‘unilateral’ from their definition of secession, the authors argue that the opposition of the parent state is an irrelevant factor with respect to the final outcome — the creation of an independent state.<sup>75</sup> In line with that argumentation, they furthermore state that:

Giving different labels to processes with the same type of outcome [for example, the creation of a state] does not help us in our endeavour to understand and analyse the political, normative and legal aspects of both the processes and their outcomes.<sup>76</sup>

These arguments, however, ignore the fact that international law attaches different legal consequences to different forms of state creation. The consent or approval by the parent state fundamentally changes the legal situation of the secessionist entity in that its *claim* is converted into an *exclusive title* to the territory concerned and, moreover, leads to a strong presumption in favour of the legality of the entity’s creation.<sup>77</sup> And although such consent by the parent state does not in and of itself confer statehood on the entity concerned, it is often critical in obtaining recognition of statehood by third states, if only because the recognition of a state created as a result of unilateral secession has important consequences for the scope and application of the right to self-determination of peoples beyond the context of decolonisation. It is difficult to consider these consequences as irrelevant to the establishment of the seceded entity as a state under international law.

Moreover, the law of state succession, for example, attaches important legal consequences to the determination of whether a case is qualified as (i) dissolution (for example, those cases in which the state is dissolved and the territory divided as a result of decision by or on behalf of the population of a state),<sup>78</sup> as in the case of the former Czechoslovakia, or (ii) as a unilateral secession by part of the state while the parent state’s legal personality (as opposed to the scope of its territory and population) remains intact, as in the case of India and Bangladesh. It is precisely because of these kinds of fundamental legal consequences that different cases, even if they have the same type of outcome, are qualified and treated differently under international law.

A final point of criticism regarding the definition used is that it does not make a distinction between territories which form part of the territory of the parent state *de jure* and those which do not. In this respect reference can be made to the regaining of independence by the Baltic States in 1990–91, the independence of

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<sup>74</sup> See, eg, Daniel P O’Connell, *State Succession in Municipal Law and International Law* (1967) vol 2, 88, 100; Crawford, above n 73, 330.

<sup>75</sup> Pavković and Radan, above n 1, 6–7.

<sup>76</sup> *Ibid* 7–8.

<sup>77</sup> An exception is formed by those situations in which the transfer of the title by the parent state was in violation of a fundamental rule of international law, as in the cases of the South African Bantustan entities: see, eg, John Dugard, *Recognition and the United Nations* (1987) 98–108.

<sup>78</sup> This is, however, only one process which may lead to the dissolution of a state. Another process is concerned with multiple unilateral secessions by several constituent parts of a state, which may eventually lead to the dissolution of that state, as in the case of the SFRY. See Raič, above n 56, 356–61.

which was generally and legally regarded as the restoration of the legal *status quo ante*, not as (unilateral) secession.<sup>79</sup> Also, in this case the qualification has important legal consequences, for instance, with respect to the legal force of treaties concluded by the Baltic States prior to their de facto incorporation in the USSR. In sum, if the authors would have used another (more limited) definition of secession, several cases could not have been included in their survey, a result of which being that they might have had to change some of their conclusions.<sup>80</sup>

## VII CONCLUSION

This study's multidisciplinary approach and straightforward style assure that students and practitioners, as well as more seasoned social and political scientists, historians and lawyers, will be able to improve their knowledge of the process of secession. Perhaps some readers would be disappointed by the fact that this study does not introduce a single model of explanation of all secessions nor a single model able to predict violence in attempts at secession. In order to do this, in particular with regard to future secessions, scholars would need to be able to foretell future events, which they (still) cannot. As the authors aptly note, the multiplicity of actors in secession, and the uncertainty of their acts and how they will influence a particular process of secession, makes the construction of such (or even less ambitious) models extremely difficult. In sum, this fine introductory study provides the reader with relevant information for a better understanding of the process of secession and the violence which often accompanies this process. If only state officials and leaders of secessionist movements would read it.

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<sup>79</sup> For instance, the then German Secretary of Foreign Affairs, Mr Genscher, stated that the Baltic States had not been 'recognised', but that the interrupted diplomatic relations had merely been re-established: Dietrich Murswiek, 'The Issue of a Right of Secession — Reconsidered' in Christian Tomuschat (ed), *Modern Law of Self-Determination* (1993) 21, 31, citing Henn-Jüri Uibopuu, 'Eine besondere Anerkennung' in *Frankfurter Allgemeine Zeitung* (Frankfurt, Germany) 28 August 1991, 2. See also Rein Müllerson, 'The Continuity and Succession of States by Reference to the Former USSR and Yugoslavia' (1993) 42 *International and Comparative Law Quarterly* 473, 480–3. Although the authors appear to share this view, they nonetheless continue to refer to these cases as secessions. See especially Pavković and Radan, above n 1, 161–2.

<sup>80</sup> Alternatively, in order to retain the different cases in their survey, they could have used the concept of (the attempt at) 'state formation' (with regard to which unilateral secession would be but one particular means).

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