

BOOK REVIEW

SELF-DETERMINATION AND SECESSION IN INTERNATIONAL LAW EDITED BY CHRISTIAN WALTER, ANTJE VON UNGERN-STERNBERG AND KAVUS ABUSHOV (OXFORD UNIVERSITY PRESS, 2014) 318 PAGES. PRICE £70.00 (HARDCOVER) ISBN 9780198702375.

The topics of self-determination and secession have gained notoriety over the past decades, as various separatist groups have battled for independence against their respective mother-states, with varying degrees of legitimacy and success. While international law developed post-World War II to embrace the concept of self-determination in the decolonisation paradigm, international legal rules on self-determination and secession in today's post-decolonisation era are less clear and less helpful in adjudicating modern-day secessionist struggles, such as those in Kosovo, Crimea, Scotland or Catalonia.¹ For this reason, *Self-Determination and Secession in International Law* is a valuable scholarly contribution to this developing area of the law.² The book is particularly helpful because it addresses various controversial legal issues, such as the definition of peoples and minorities for the purposes of self-determination, the role of recognition of states regarding secession, secession and the use of force, the principle of *uti possidetis* and its relevancy in secessionist struggles, as well as because it includes a discussion of various comparative case studies on secession, including those from the post-Soviet block — Transnistria, South Ossetia, Abkhazia and Nagorno-Karabakh — as well as Kosovo, Western Sahara, Eritrea and Crimea (in a postscript).

The book is an edited collection of essays addressing various facets of the legal topic of self-determination and secession. The general approach of the book is thoughtfully laid out in the introductory chapter by Christian Walter and Antje von Ungern-Sternberg, who appropriately ask: '[w]here does international law currently stand on self-determination and secession?'³ They further acknowledge that 'the exact contents of the right [to self-determination] remain a matter of dispute'⁴ and describe the goal of the book as answering the difficult questions of who is entitled to the right, whether the right is solely applicable in situations of decolonisation and military occupation and what the exact contents of the

¹ See Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge University Press, 1995) 121; Samuel Ethan Meller, 'The Kosovo Case: An Argument for a Remedial Declaration of Independence' (2012) 40 *Georgia Journal of International and Comparative Law* 833, 845–50; Malcolm N Shaw, 'Peoples, Territorialism and Boundaries' (1997) 8 *European Journal of International Law* 478, 483–4.

² Christian Walter, Antje von Ungern-Sternberg and Kavus Abushov (eds), *Self-Determination and Secession in International Law* (Oxford University Press, 2014).

³ Christian Walter and Antje von Ungern-Sternberg, 'Introduction: Self-Determination and Secession in International Law — Perspectives and Trends with Particular Focus on the Commonwealth of Independent States' in Walter, von Ungern-Sternberg and Abushov (eds), above n 2, 2.

⁴ *Ibid.*

right comprise: minority rights, autonomy or, as a matter of last resort, a right to secession?⁵

Walter and von Ungern-Sternberg highlight several general aspects of the book's academic inquiry into the contours of self-determination under modern-day international law, including the intersection of national and international law inherent in any self-determination inquiry, the role of law and judicial lawmaking in the field of self-determination, challenges to the traditional notion of statehood and state sovereignty stemming from a recognition of the right to self-determination and the different types of secessionist conflicts where the right to self-determination has been triggered by various factions.⁶

Part I of the book addresses general legal issues regarding self-determination and secession, as well as recent judicial opinions on this topic — the International Court of Justice's ('ICJ') advisory opinion *Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo* ('*Kosovo Advisory Opinion*')⁷ and the European Court of Human Rights' decision in *Sejdić v Bosnia and Herzegovina*⁸ — and an introductory discussion of secession in the post-Soviet world, which provides an excellent liaison to Part II, which in turn consists of several detailed chapters on various case studies on self-determination and secession from the post-Soviet republics, as well as to Part III which contains other comparative studies of self-determination and secession from around the globe. This review will highlight some of the most relevant issues discussed by various authors and will emphasise several of their most innovative legal arguments, which contribute well to existing scholarship on self-determination and secession.

In Part I, Joshua Castellino's chapter focuses on defining 'peoples' for the purposes of self-determination.⁹ Castellino retraces the history of self-determination within the context of answering the fundamental question identifying who or which groups may be entitled to it. Castellino highlights the tension between the fundamental norm of territorial integrity of states and the right to self-determination and correctly points out that self-determination outcomes are often driven by a variety of political factors.¹⁰ He then discusses the status of three distinct groups under international law who may claim the right to statehood and self-determination: peoples (also referred to as 'nations' or 'submerged nations'); indigenous peoples (also referred to as 'First Nations' or 'Indians' and usually understood as subsuming 'Tribal Peoples'); and minorities (also referred to as 'ethnic, linguistic, or religious minorities' or 'national minorities').¹¹ Next, Castellino discusses the existence of the right to self-determination for each of these groups, peoples, indigenous peoples and minorities within the *International Covenant on Civil and Political Rights*

⁵ Ibid.

⁶ Ibid 3–8.

⁷ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Advisory Opinion)* [2010] ICJ Rep 403 ('*Kosovo Advisory Opinion*').

⁸ *Sejdić v Bosnia and Herzegovina* [2009] VI Eur Court HR 273.

⁹ Joshua Castellino, 'International Law and Self-Determination: Peoples, Indigenous Peoples, and Minorities' in Walter, von Ungern-Sternberg and Abushov (eds), above n 2, 27.

¹⁰ Ibid 29–32.

¹¹ Ibid 32.

(‘*ICCPR*’)¹² framework. Castellino contends that the right to self-determination should extend to colonial peoples and indigenous peoples alike, whereas minorities would enjoy rights guaranteed by art 27 of the *ICCPR*, including the right to non-discrimination, equality and equal opportunity in the civil, political, economic, social and cultural realms.¹³ While the latter proposition has been readily accepted in law and literature, the former is a more ambitious argument and an excellent addition to already existing scholarship on this subject. Castellino argues that bringing indigenous peoples within the parameters of ‘peoples’ for the purposes of self-determination is advantageous because of ‘similarities between their situation and that of colonial peoples, and also in recognition of the dispossession of their lands, which first led to the incursion and creation of non-representative sovereign states upon their territories’.¹⁴

Last but not least, Castellino argues that regardless of the type of group concerned

a new expression of self-determination is emerging in the face of groups who face a threat of physical extinction from within the state in which they exist ... should a state pursue such an agenda as a matter of policy then a natural right to self-defence would exist for the incumbent population; the expression of this right might well take the form of secession from the state ...¹⁵

Castellino places the case studies of East Timor, Eritrea, Bangladesh and Kosovo within this category.¹⁶ In sum, Castellino’s chapter is an excellent overview of self-determination through a detailed discussion of various different groups which have sought to exercise this right under international law. Castellino’s chapter also provides a novel argument about the holders of self-determination rights — that indigenous peoples, in addition to colonial peoples, should be afforded self-determination rights. An extension of this argument, left perhaps to a future academic publication, would be that international law bestows external self-determination rights on peoples outside of the decolonisation context.¹⁷

Stefan Oeter’s chapter focuses on questions of state sovereignty, statehood and recognition inherently implicated in every secessionist struggle.¹⁸ In

¹² *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

¹³ Castellino, above n 9, 36–40.

¹⁴ *Ibid* 38.

¹⁵ *Ibid* 39.

¹⁶ *Ibid*.

¹⁷ Many authors have argued that international law is silent on whether there is such a substantive right. See Olivier Corten, ‘Are There Gaps in the International Law of Secession?’ in Marcelo G Kohen (ed), *Secession: International Law Perspectives* (Cambridge University Press, 2006) 231; James Crawford, *The Creation of States in International Law* (Oxford University Press, 2nd ed, 2006) 388–91; Théodore Christakis, *Le droit à l’autodétermination en dehors des situations de décolonisation* (La Documentation Française, 1999) 74, 118. More recent authors have argued that international law should develop to embrace more precise rules on self-determination and secession outside of the decolonisation context. See, eg, Milena Sterio, *The Right to Self-Determination under International Law: “Selfistans,” Secession, and the Rule of the Great Powers* (Routledge, 2013) 57–70; Thomas Burri, ‘The Kosovo Opinion and Secession: The Sounds of Silence and Missing Links’ (2010) 11 *German Law Journal* 881, 886–9.

¹⁸ Stefan Oeter, ‘The Role of Recognition and Non-Recognition with Regard to Secession’ in Walter, von Ungern-Sternberg and Abushov (eds), above n 2, 45.

particular, Oeter focuses on the Kosovo precedent and appropriately asks whether the ICJ's *Kosovo Advisory Opinion* has 'produced a change of tide in international recognition practice'.¹⁹ Oeter first retraces the traditional doctrines of recognition including the declaratory and constitutive theories.²⁰ Next, Oeter correctly notes that in state practice there has long existed a bias against secession and against recognising secessionist entities.²¹ Moreover, Oeter points out that 'traditional doctrine has dealt with phenomena of secession as a mere factual issue not governed as such by international law' and that international law also contains a norm prohibiting intervention by third states, which applies in cases of secessionist conflicts.²² These observations combined explain, according to Oeter, the international community's reluctance to support processes of secession outside of the decolonisation context.²³ Oeter next tackles the issue of self-determination outside of the decolonisation framework; Oeter's chapter's contribution to existing scholarship on self-determination is particularly impressive in his discussion of this issue. Oeter argues that self-determination has always been related to historically pre-constituted political entities with a specific territory and that a people entitled to self-determination is the constituent population of a particular historically-formed territorial entity.²⁴ Other groups which do not constitute such historically pre-determined territorial peoples may only enjoy rights to internal self-determination, which may function if the mother-state guarantees a certain amount of limited self-government to the minority group.²⁵ Oeter believes that this solution is preferable for two reasons. First, the secessionist group with specific historic ties to a territorial unit will have to demonstrate, preferably through a referendum, why its preference for secession is the best approach.²⁶ Secondly, this type of secession respects the principle of *uti possidetis* by foreclosing from the start the possibility of raising other territorial claims which would go beyond the established historical boundaries.²⁷

Lastly, Oeter recognises that in exceptional cases of brutal oppression, groups may have a reasonable claim to secession, but cautions that it would be 'better to conceive such situations of (exceptional) legitimacy of secession not in terms of a clear-cut (collective) right, but in broader terms of legitimacy open to international moderation and judgement'.²⁸

Oeter believes that the instances of Kosovo, Abkhazia and South Ossetia did not contribute to the establishment of a doctrine of remedial secession in state practice because these instances were *ad hoc* and influenced by other non-legal

¹⁹ Ibid 48. See *Kosovo Advisory Opinion* [2010] ICJ Rep 403.

²⁰ Oeter, above n 18, 48–52.

²¹ Ibid 50–2.

²² Ibid 51.

²³ Ibid 52: '[t]he community of states shows a strong reluctance to support processes of secession — many states feel threatened by separatist movements and perceive secession to erode the stability of the international order'.

²⁴ Ibid 54.

²⁵ Ibid 53–61.

²⁶ Ibid 58.

²⁷ Ibid.

²⁸ Ibid 59.

factors.²⁹ Ultimately, Oeter argues that when it comes to recognition of new secessionist entities there has been a trend towards collective recognition or action, as evidenced by the European Union criteria on recognition following the dissolution of the former Yugoslavia; this trend may have been necessary because of the international community's role in moderating ongoing conflicts and judging the validity of competing territorial claims.³⁰ Oeter states: 'the pattern of collective action in recognition ... is needed in order to gain political leverage over the parties — leverage that is needed in order to broker a peace arrangement'.³¹

Moreover, '[c]ollective recognition policy is an instrument of political management' and the process of (new secessionist) state formation must be compatible with the normative criteria necessary for statehood announced by the policymaker (such as the EU).³² Entities created through processes incompatible with the normative framework of the existing regional or international community of states will be collectively denied recognition. Oeter's last set of arguments is also a particularly innovative and novel contribution to already existing scholarly opinions on self-determination and its relationship with the theory of recognition. Oeter's view on collective recognition as a tool of international relations management may prove particularly useful in solving future secessionist conflicts, and possibly in rethinking ongoing ones.

Antonello Tancredi's chapter discusses the international norm on the non-use of force as it applies to secessionist conflicts.³³ First, Tancredi describes various stages in a secessionist conflict. If the conflict is at an 'internal disturbances and tensions' stage, it remains below the threshold of non-international armed conflict, is not regulated by international humanitarian law and the relationship between the state authorities and the secessionist entity is purely internal.³⁴ Secondly, the conflict may reach the threshold of non-international armed conflict if the situation is one of 'protracted armed violence between governmental authorities and organized armed groups or between such groups within a State'.³⁵ This test espoused by case law of the International Criminal Tribunal for the Former Yugoslavia and now codified in art 8(2)(f) of the *Rome Statute of the International Criminal Court*³⁶ focuses on the intensity of the

²⁹ Stefan Oeter argues that the cases of Kosovo, Abkhazia and South Ossetia constitute hard cases that make bad law: *ibid* 59–60.

³⁰ *Ibid* 60–4.

³¹ *Ibid* 64.

³² *Ibid*.

³³ Antonello Tancredi, 'Secession and Use of Force' in Walter, von Ungern-Sternberg and Abushov (eds), above n 2, 68.

³⁴ *Ibid* 70.

³⁵ *Prosecutor v Tadić (Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction)* (International Criminal Tribunal for the Former Yugoslavia, Appeals Chamber, Case No IT-94-1-A, 2 October 1995) [70]. See also *ibid* 71.

³⁶ *Rome Statute of the International Criminal Court*, opened for signature 17 July 1998, 2187 UNTS 90 (entered into force 1 July 2002).

violence and the organisation of the parties.³⁷ If the secessionist conflict has reached this stage, and if dissident armed forces control part of the disputed territory, then this conflict will be governed by relevant rules of international humanitarian law.³⁸ The next question, as Tancredi correctly points out, is whether rules of *jus ad bellum* also apply to this type of conflict. Here, Tancredi addresses a relatively novel argument

that the scope of the customary ban on the use of force today is actually broader than the contractual one enshrined in the *UN Charter*, so that it would extend to non-international relations and thus apply also in instances of secessionist struggles.³⁹

According to Tancredi, this argument is predicated on two developments in international law: post-1990 practice — in particular, the international community's stances on the secessionist conflicts in the former Yugoslavia, in Abkhazia and in Kosovo — as well as the ICJ's 2010 *Kosovo Advisory Opinion*.⁴⁰ Tancredi, through innovative and methodical legal reasoning developed in this chapter, rejects this argument and concludes that this type of extension of the non-use of force to internal conflicts has not yet matured into law and practice. In order to reach this conclusion, Tancredi addresses several points. First, he discusses whether third states may lawfully intervene to help preserve the territorial integrity of state (presumably threatened by a secessionist conflict).⁴¹ Tancredi cites several examples from recent state practice to conclude in the affirmative, that states may invite external help to secure control over their territory — such examples include the UN intervention in the Congo against the secessionist attempt of Katanga in 1960, the Indian intervention in Sri Lanka in 1987 and the recent intervention of France and an international support mission in Mali in 2013.⁴² Next, Tancredi argues that third states may not interfere on the territory of states to support secessionist groups; he cites the ICJ's infamous *Military and Paramilitary Activities in and against Nicaragua* judgment as precedent, as well as other examples from state practice, including the UN Security Council's condemnation of the Turkish military support of the Turkish Republic of Northern Cyprus in 1983 and the UN Security Council's warning to all warring parties in the conflict in Bosnia-Herzegovina in 1992, that

³⁷ See Tancredi, above n 33, 71, citing *Prosecutor v Tadić (Opinion and Judgment)* (International Criminal Tribunal for the Former Yugoslavia, Trial Chamber, Case No IT-94-1-T, 7 May 1997) [562]; *Prosecutor v Limaj (Judgment)* (International Criminal Tribunal for the Former Yugoslavia, Trial Chamber II, Case No IT-03-66-T, 30 November 2005) [84], [90]; *Prosecutor v Haradinaj (Judgment)* (International Criminal Tribunal for the Former Yugoslavia, Trial Chamber I, Case No IT-04-84-T, 3 April 2008) [37]–[49].

³⁸ Tancredi, above n 33, 71.

³⁹ *Ibid* 72.

⁴⁰ *Ibid* 72–3. See *Kosovo Advisory Opinion* [2010] ICJ Rep 403.

⁴¹ Tancredi, above n 33, 77.

⁴² *Ibid* 81. At 89:

[E]ven though the practice regarding secessionist conflicts is scant, sometimes chaotic and not easy to interpret ... it nonetheless shows that foreign military interventions carried out upon the invitation of the central authorities with a view to repelling a secessionist attempt are, generally speaking, well tolerated, especially if additionally motivated by reasons of counter-intervention or reaction to threats/violations of collective interests.

any unilaterally seceding entities would not be accepted.⁴³ In addition, Tancredi cites as relevant precedent the international community's condemnation of the Russian military action in Abkhazia and South Ossetia and the UN Security Council's condemnation of the Armenian military action in the Nagorno-Karabakh break-away region of Azerbaijan.⁴⁴ Ultimately, Tancredi concludes that

when collective interests are threatened ... as a consequence of secessionist conflicts — preservation of the unity of the state ... is a state's responsibility towards its citizens and their fundamental rights on the one hand, and the international community and other collective interests concerning peace, security, and stability on the other.⁴⁵

Tancredi's contribution is particularly notable because of his comprehensive discussion of the applicability of international law's prohibition on the use of force towards various interstate and intrastate relationships involved in secessionist struggles. While the prohibition on the use of force appears clear-cut and easy to apply in instances of interstate conflict, its contours are infinitely less precise when it comes to intrastate insurgency and third-state involvement in such insurgency, factors often present in secessionist conflicts.⁴⁶ Tancredi's thoughtful legal reasoning on this subject and his use of state practice examples provide much needed clarity and complement existing legal scholarship.

Anne Peters examines the principle of *uti possidetis* and considers whether it is relevant for issues of secession.⁴⁷ Peters in her chapter focuses on the issue of state borders within the context of the *uti possidetis* principle and inquires whether this principle applies to former republican and provincial borders of Soviet administrative entities such as Abkhazia, South Ossetia, Transnistria and Nagorno-Karabakh. First, Peters traces the history of *uti possidetis* from Roman law to more recent international law cases including *Frontier Dispute (Burkina Faso v Mali)*,⁴⁸ *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea*,⁴⁹ and *Opinions No 2 and 3* of the Arbitration

⁴³ Ibid 89–91. See *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (Merits)* [1986] ICJ Rep 14; SC Res 541, UN SCOR, 38th sess, 2500th mtg, UN Doc S/RES/541 (18 November 1983); SC Res 787, UN SCOR, 47th sess, 3137th mtg, UN Doc S/RES/787 (16 November 1992).

⁴⁴ Tancredi, above n 33, 92. See SC Res 876, UN SCOR, 48th sess, 3295th mtg, UN Doc S/RES/876 (19 October 1993); SC Res 853, UN SCOR, 48th sess, 3259th mtg, UN Doc S/RES/853 (29 July 1993); SC Res 884, UN SCOR, 48th sess, 3313th mtg, UN Doc S/RES/884 (12 November 1993).

⁴⁵ Tancredi, above n 33, 94.

⁴⁶ For a general discussion of use of force issues related to non-state actors. See, eg, Steven R Ratner, 'Self-Defense against Terrorists: The Meaning of Armed Attack' in Larissa van den Herik and Nico Shrijver (eds), *Counter-Terrorism Strategies in a Fragmented International Legal Order: Meeting the Challenges* (Cambridge University Press, 2013) 334; Stephanie A Barbour and Zoe A Salzman, "'The Tangled Web': The Right of Self-Defense against Non-State Actors in the *Armed Activities Case*' (2008) 40 (Special Issue) *New York University Journal of International Law and Politics* 53.

⁴⁷ Anne Peters, 'The Principle of *Uti Possidetis Juris*: How Relevant Is It for Issues of Secession?' in Walter, von Ungern-Sternberg and Abushov (eds), above n 2, 95.

⁴⁸ *Frontier Dispute (Burkina Faso v Mali) (Judgment)* [1986] ICJ Rep 554 ('*Frontier Dispute Case*').

⁴⁹ *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v Honduras) (Judgment)* [2007] ICJ Rep 659.

Commission of the Peace Conference on Yugoslavia ('Badinter Commission') in the context of the dissolution of the former Yugoslavia.⁵⁰ Peters distinguishes between the customary law quality of colonial *uti possidetis*, which is uncontroversial, and the non-colonial *uti possidetis*, whose existence as a norm of customary law is disputed but which may apply to particular secessionist conflicts by state agreement.⁵¹ Next, Peters observes that *uti possidetis* is indifferent to the legal grounds of statehood and 'enters the scene only after independence has been acquired'.⁵² Peters also observes that *uti possidetis* generally protects the existence of a boundary, but not the title to any particular territory.⁵³ Next, Peters applies *uti possidetis* to the dissolutions of the former Soviet Union and the former Yugoslavia.⁵⁴ Peters discusses various scholarly views on the sources of *uti possidetis* as applicable to these former states, and concludes that *uti possidetis* could have applied to the Soviet Union and the former Yugoslavia on the bases of state consent or agreement, as a political device, as a purely declaratory practice or as an expression of the relevant actors' *opinio juris*, leading towards the creation of a customary norm of international law.⁵⁵ If the latter is correct, then *uti possidetis* could apply to future cases of state dissolution and secession and could exist in its non-colonial form. Peters ultimately concludes that *uti possidetis* today has the value of a customary rule which applies in the non-colonial context, including to cases of secession.⁵⁶ Here lies, in my view, Peters' most important contribution to existing scholarship on secession — in the development of her argument that *uti possidetis* applies both to cases arising in the colonial context and those arising outside thereof, including cases of secession. This view, which Peters develops particularly well, is novel and contributes towards the general understanding of the interception of norms such as *uti possidetis* with the right to non-colonial self-determination.

Peters supports her view by citing case law, including *Frontier Dispute (Burkina Faso v Mali)*,⁵⁷ Badinter Commission opinions,⁵⁸ as well as the *Kosovo Advisory Opinion*,⁵⁹ by analogising decolonisation and secession, which both have the same result of producing new states, and by examining the purposes of *uti possidetis*, which, according to Peters, should be applied to borders contextually, taking into account ethnicity, culture and language.⁶⁰ Peters next discusses the scope of *uti possidetis* in the non-colonial context and concludes that *uti possidetis* is applicable to all internal boundary lines 'independent of the precise domestic law status and meaning of the boundary'.⁶¹ She also argues that

⁵⁰ Peters, above n 47, 99. See *Yugoslavia Peace Conference Opinion No 2* (1992) 92 ILR 167; *Yugoslavia Peace Conference Opinion No 3* (1992) 92 ILR 170.

⁵¹ Peters, above n 47, 99–100.

⁵² *Ibid* 101.

⁵³ *Ibid* 101–2.

⁵⁴ *Ibid* 103–6.

⁵⁵ *Ibid*.

⁵⁶ *Ibid* 110.

⁵⁷ *Frontier Dispute Case* [1986] ICJ Rep 554.

⁵⁸ See *Yugoslavia Peace Conference Opinion No 1* (1991) 92 ILR 162; *Yugoslavia Peace Conference Opinion No 2* (1992) 92 ILR 167; *Yugoslavia Peace Conference Opinion No 3* (1992) 92 ILR 170; *Yugoslavia Peace Conference Opinion No 4* (1992) 92 ILR 173.

⁵⁹ *Kosovo Advisory Opinion* [2010] ICJ Rep 403.

⁶⁰ Peters, above n 47, 119.

⁶¹ *Ibid* 123.

uti possidetis should be applicable to state and non-state actors, who may already be purporting to form a state, but that the moment at which this principle becomes applicable may be unclear from existing law and practice.⁶² Peters then proceeds to discuss uti possidetis as it relates to other principles of international law. She argues that uti possidetis and self-determination are not simply irreconcilable and that uti possidetis may at times serve the purposes of self-determination.⁶³ She distinguishes uti possidetis from principles of territorial integrity, intangibility and non-intervention, which come into play after uti possidetis.⁶⁴ She also highlights the dispositive quality of uti possidetis as a fallback rule or presumption, applicable only if relevant actors have not established a different boundary line by agreement. Uti possidetis is thus, according to Peters, a starting point in boundary drawing processes; deviations are possible through UN Security Council determinations, as well as through state consent, including consent by concerned populations via referendums.⁶⁵ Peters concludes by arguing that uti possidetis is applicable to non-colonial secession and ‘can potentially transform *any type* of internal territorial demarcation that has been established in domestic law in the period of time before secession into an international one once secession has been successful’.⁶⁶

Peters’ greatest contribution to existing literature on secession lies precisely in her methodical development of the latter argument — that uti possidetis is ‘a suitable mechanism for (provisionally) determining a boundary line ... in the event of a secession’.⁶⁷ If Peters is correct and if her view is embraced more generally, the principle of uti possidetis would no longer be viewed as a stumbling block for secessionist movements, preventing them from changing existing boundaries, but instead, as a starting point in future negotiations on territory. Peters’ view may prove useful in resolving ongoing and future secessionist conflicts.

Two other chapters are worth highlighting in Part I: Christian Walter’s chapter on the ICJ’s *Kosovo Advisory Opinion* and Thomas Burri’s chapter on secession in the Commonwealth of Independent States (‘CIS’).⁶⁸ Walter’s chapter analyses the ICJ’s advisory opinion on the Kosovar declaration of independence, concluding that the judicial minimalism chosen by the ICJ was the best approach to complex and politically charged issues of secession and self-determination.⁶⁹ Burri’s chapter examines the right to secession in former Soviet republics, with references to Kosovo as well as the former Yugoslavia, concluding that secession is not a solution per se to any conflict, but simply part of the underlying problem and that other solutions for resolving and diffusing

⁶² Ibid 124–5.

⁶³ Ibid 126–7.

⁶⁴ Ibid 127–9.

⁶⁵ Ibid 129–35.

⁶⁶ Ibid 136 (emphasis in original).

⁶⁷ Ibid 137.

⁶⁸ Christian Walter, ‘The *Kosovo Advisory Opinion*: What It Says and What It Does Not Say’, in Walter, von Ungern-Sternberg and Abushov (eds), above n 2, 13. See also *Kosovo Advisory Opinion* [2010] ICJ Rep 403; Thomas Burri, ‘Secession in the CIS: Causes, Consequences, and Emerging Principles’ in Walter, von Ungern-Sternberg and Abushov (eds), above n 2, 138.

⁶⁹ Walter, above n 68.

secessionist conflicts should always be contemplated.⁷⁰ These chapters complement other more theoretical chapters of Part I and provide an excellent segue into Parts II and III, which address specific case studies on secession.

Part II of the book contains case studies from the CIS. Bill Bowring analyses the case of Transnistria, Christopher Waters focuses on South Ossetia, Farhad Mirzayev on Abkhazia and Heiko Krüger on Nagorno-Karabakh.⁷¹ These cases have been referred to as ‘frozen conflicts’ and have been unresolved for years, for a variety of political and legal reasons.⁷² Bowring, Waters, Mirzayev and Krüger’s chapters focus on the history of these regions, analyse the question of self-determination and secession for these four CIS entities and ultimately conclude that the right of secession does not exist for any of them.⁷³ These chapters are excellent contributions to existing scholarship on secession because they provide a comprehensive and thorough analysis of particular conflicts in the former Soviet republics and ask whether the principle of self-determination, leading towards remedial secession, applies in these specific situations.

Part III of the book focuses on additional comparative studies of secessionist conflicts, including Kosovo in a chapter by James Summers, Western Sahara in a chapter by Sven Simon, Eritrea in a chapter by Gregory Fox and a postscript on the Crimean crisis by Christian Walter.⁷⁴

Summers’ chapter on Kosovo provides a comprehensive factual and historic overview of this conflict and then focuses on the right of secession under national law, under applicable Security Council resolutions, as well as under international law.⁷⁵ Summers accurately highlights the present state of affairs under international law:

There appears to be general agreement among states that Kosovo does not have a general right to independence, but a more divisive matter is whether Kosovo obtained one as a result of Serbian oppression culminating in the ethnic cleansing of 1999.⁷⁶

Ultimately, Summers concludes that although many international law questions remain as to the status of Kosovo, this entity appears to be moving steadily towards statehood.⁷⁷ Simon accomplishes a similar analysis on Western Sahara in his chapter. Unlike Summers, who appears sceptical about the Kosovar

⁷⁰ Burri, above n 68.

⁷¹ Bill Bowring, ‘Transnistria’ in Walter, von Ungern-Sternberg and Abushov (eds), above n 2, 157; Christopher Waters, ‘South Ossetia’ in Walter, von Ungern-Sternberg and Abushov (eds), above n 2, 175; Farhad Mirzayev, ‘Abkhazia’ in Walter, von Ungern-Sternberg and Abushov (eds), above n 2, 191; Heiko Krüger, ‘Nagorno-Karabakh’ in Walter, von Ungern-Sternberg and Abushov (eds), above n 2, 214.

⁷² See Christopher J Borgen, ‘Imagining Sovereignty, Managing Secession: The Legal Geography of Eurasia’s “Frozen Conflicts”’ (2007) 9 *Oregon Review of International Law* 477.

⁷³ Bowring, above n 71; Waters, above n 71; Mirzayev, above n 71; Krüger, above n 71.

⁷⁴ James Summers, ‘Kosovo’ in Walter, von Ungern-Sternberg and Abushov (eds), above n 2, 235; Sven Simon, ‘Western Sahara’ in Walter, von Ungern-Sternberg and Abushov (eds), above n 2, 255; Gregory Fox, ‘Eritrea’ in Walter, von Ungern-Sternberg and Abushov (eds), above n 2, 273; Christian Walter, ‘Postscript: Self-Determination, Secession, and the Crimean Crisis 2014’ in Walter, von Ungern-Sternberg and Abushov (eds), above n 2, 293.

⁷⁵ Summers, above n 74, 236–44.

⁷⁶ *Ibid* 251.

⁷⁷ *Ibid* 254.

right to self-determination, Simon concludes that the people of Western Sahara have a right to self-determination, because Western Sahara represents a case of decolonisation, unlike other case studies in the book, which have all arisen outside of this well-accepted paradigm of self-determination.⁷⁸ Gregory Fox analyses the situation of Eritrea in his chapter, by retracing the Eritrean path to independence, its civil war with Ethiopia and its claims to self-determination.⁷⁹ He concludes, like most other authors in the book, that '[t]he doctrine of remedial secession is controversial, residing more in theory than practice' and that in the Eritrean case, it would be impossible to determine whether the level of Ethiopian aggression against Eritrea was sufficiently elevated to justify the Eritrean exercise of remedial secession, assuming that such a right exists in international law.⁸⁰ Finally, Fox distinguishes the Eritrean case from the 'frozen' conflicts in the CIS, analysed in Part II, and attempts to draw relevant lessons from the Eritrean case that would be helpful in resolving the CIS cases.⁸¹ He concludes that 'a claim of remedial secession cannot be achieved where a group claims no more than (a) subordination within the parent state's political system and (b) violence and killing resulting from fighting a secessionist civil war'.⁸²

Instead, justification for the right to remedial secession must come from elsewhere, and Fox predicts that the CIS secessionist entities may have missed their opportunity for international involvement and positive resolution of their conflicts.⁸³ Last, Christian Walter analyses the recent conflict in Crimea. He first highlights similarities and differences between Crimea and other CIS conflicts analysed in the book.⁸⁴ He then focuses on a discussion of the principle of territorial integrity, and self-determination and secession.⁸⁵ He concludes, like most other authors, that it is questionable whether international law grants groups the right to remedial secession within the paradigm of self-determination, and that, even if this right were in existence, its conditions would not be met in the case of Crimea.⁸⁶ Thus, Walter concludes that 'the integration of the Crimea into the Russian Federation was illegal' and that the ICJ's *Kosovo Advisory Opinion* 'had a price attached to it' because the opinion's judicial minimalism approach

⁷⁸ Simon, above n 74, 265: 'there is no doubt whatsoever that the people of Western Sahara have a right to self-determination'. At 267–8: 'Western Sahara is a case of decolonization in an otherwise predominantly autonomist and secessionist era. Neither Transnistria nor South Ossetia, Abkhazia, or Nagorno-Karabakh have a decolonization background'.

⁷⁹ Fox, above n 74, 274–89.

⁸⁰ Ibid 288. Fox notes that it would be impossible to answer the question of whether the level of Ethiopian oppression against Eritrea was sufficient to trigger the right to remedial secession by the latter, because

[t]his is an impossible question to answer, involving comparisons of human suffering across different times, cultures, and political contexts. There is little agreement among scholars on this point and their views are generally not based in state practice showing successful secession to have emerged from some set of brutal state policies but not others.

⁸¹ Ibid 289–92.

⁸² Ibid 291.

⁸³ Ibid 292.

⁸⁴ Walter, above n 74, 294–8.

⁸⁵ Ibid 299–307.

⁸⁶ Ibid 305–7.

did not contribute to the development of international law on secession.⁸⁷ Part III of the book, like Part II, is an impressive addition to existing scholarship on self-determination and secession because it contains comprehensive and thorough analyses of recent secessionist conflicts, including their history as well as more recent developments, and because it compares and differentiates such conflicts to those described in Part II arising in the post-Soviet paradigm. This type of compare-and-contrast analysis is particularly helpful to anyone seeking to understand international law's complex attitude towards self-determination and secession.

The book, for all the reasons discussed above, is a timely and thorough addition to already existing literature on self-determination and secession. Christian Walter writes in his postscript chapter on Crimea that 'silence is not an option' in the complex arena of secessionist conflict resolution and self-determination.⁸⁸ The book fully espouses that view by developing new normative ideas and arguments on secession and by analysing modern-day secessionist struggles.

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⁸⁷ Ibid 310–11. Walter argues that the International Court of Justice, '[i]n pursuing its "judicial minimalism"' approach in the *Kosovo Advisory Opinion*,

not only avoided any general statements on the law of self-determination and on secession as such; it also refrained from any detailed considerations as to possible circumstances under which declarations of independence nevertheless raise issues of international law ... As a result, the exact scope of exclusion of declarations of independence from international law remains unclear.

At 311. See *Kosovo Advisory Opinion* [2010] ICJ Rep 403.

⁸⁸ Walter, above n 74, 311

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