around the hybrid legal nature of authorized operations, which are neither purely institutional measures nor decentralized reactions, but encompass both institutional and decentralized elements. This conclusion necessarily reflects and affects their *sui generis* legal regime when it comes to their conduct on the ground. The institutional elements comprise the legal characterization of the situation, the initiative to take action and the organization/direction of the operation. He emphasizes with de Wet that all these functions are incumbent upon the Council and may not be delegated to states if the operations are to remain within the bounds of legality. Sicilianos' arguments are remarkably consistent throughout the book and throughout his writings. He is less concerned, if at all, with the politics behind the authorizations (in fact, none of the books under review engages in an interdisciplinary analysis), but remains preoccupied with developing from scratch the legal premises and framework of the authorizations and their functioning on the ground, based upon SC, UN and state practice. His exhaustive use of pertinent UN material to that effect makes his conclusions and suggestions on novel legal questions (such as the applicable law in so-called low-intensity operations) instructive and reliable.

On the other hand, López-Jacoiste's analysis of UN-authorized operations is flawed. She apparently confuses the generally accepted authorizations to use all necessary means (implying the use of force) with the highly controversial implicit authorizations. Surprisingly (judging from her overall restrictive pattern of interpreting SC powers and resolutions), she seems sympathetic to the latter – in sharp contrast to Sicilianos, de Wet and this reviewer – but considers the UN-authorized humanitarian operations in Somalia and elsewhere not in conformity with Charter provisions from a strictly legal perspective, even though reasonable and morally necessary.

Highlighting some of the merits of the books under review, one can sum up as follows: Sicilianos demonstrates that SC innovations can be welcome and viable contributions to the cause of peace and security, while remaining within the bounds of legality. A plurality of (f)actors within and outside the UN have largely contributed to the Council becoming increasingly mindful of legality considerations and adjusting its practice of authorizations accordingly. This encouraging development took place without any judicial review, emphasizing the merits of López-Jacoiste's multifaceted concept of control. Absent a predictable system of judicial review, such alternative mechanisms of control should be further developed in order to foster the rule of law in international relations by effectively enforcing the (few but fundamental) limits to the Council's powers, which de Wet has aptly articulated.

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David Raič. ***Statehood & the Law of Self-Determination***. Leiden, Boston: Martinus Nijhoff Publishers, 2002. Pp. 515. ISBN 904111890x.

At first glance another book on self-determination may not seem an exciting prospect to scholars of international law. However, despite the intensive scrutiny this subject has come under by recent generations of international lawyers,[9] it continues to evade clarity, remaining a concept of 'uncertain legal

[9] Notably in volumes written, amongst several others, by A. Cassese, *Self-Determination of Peoples, A Legal Reappraisal* (1995); J. Crawford, *The Creation of States in International Law* (1979); J. Crawford (ed.), *The Rights of Peoples* (1988); H. Hannum, *Autonomy, Sovereignty, and Self-Determination, the Accommodation of Conflicting Rights* (1996); M. Pomerance, *Self-Determination in Law & Practice, the New Doctrine in the United Nations* (1982); A. Rigo Sureda, *The Evolution of the Right of Self-Determination, A Study of United Nations Practice* (1973); C. Tomuschat (ed.), *Modern Law of Self-Determination* (1993).

valence'.[10] This addition to the volumes written on the subject seeks to reiterate reasonably well-established concepts, but also boldly attempts to seek new explanations and rationales for more recent events, and their effect on the amorphous 'law' of self-determination. In the course of the work, the author seeks to investigate whether international law as a discipline remains equipped to face the numerous challenges that recent ethnic conflicts and the creation of new states have posed to its edifice, and that of the state system as developed since the *Peace of Westphalia*.

Writing in 1973, Sinha, in a thought-provoking article, posed the question as to whether self-determination was *passé*.[11] After all, at the time decolonization, with a few notable exceptions, had nearly been completed; and even the United Nations General Assembly's Fourth Committee, charged with overseeing decolonization, was scaling down its operations. The decades since then have provided a conclusive answer to that question. While self-determination in the sense of decolonization may be *passé*, there are renewed claims for it from other groups. Some of these claims may be dismissed as being motivated by a desire to dismember states and garner greater influence for particular groups, but to paint every claim of self-determination as such would be inaccurate. This is particularly important in a context where the growth of human rights law has led to an increasing recognition of the importance of group rights, the most classic of which, and arguably the starting point for human rights itself, would be the 'right' of self-determination. Thus, what was perhaps included in the 1966 human rights covenants as a reflection and validation of the decolonization process has since become an issue of growing importance for new claimants, with each of these claims further threatening the citadel of established international legal principles.

The concept of territorial integrity is among the concepts most challenged by this phenomenon. It is clear that an unlimited right of self-determination (including secession) leaves the state system vulnerable to challenge and the whims of groups and perhaps groups within groups. This would threaten the international order that international law strives to maintain. The question of the tension between territorial integrity and self-determination lies at the very heart of this discourse and many telling comments have been made along the lines of the fact that international law is not a suicide club for states.[12] Rather than shrink from the challenge posed by these issues, though, the author of this book has tackled them head on, offering observations not only on the tension between these concepts but also on the notion of recognition of statehood and the doctrine of statehood itself.

It is clear that the central argument underpinning the work is that self-determination is not *passé*, but has great relevance beyond the colonial context. The author substantiates this claim in many ways, including through a historical analysis under the 'how the norm has changed' guise, leading him to conclude that this new post-decolonization phase too, is a new form of the principle, and one that needs to be interpreted within the framework of public international law. Within this rubric he carefully constructs his argument, taking into account the developments in human rights law and the undiminished aspirations of certain minorities who argue for self-determination, including, on occasion, the right to separate statehood. The book is particularly insightful regarding the events in Eastern and Central Europe and their relevance to the developing doctrine of self-determination. In seeking to build his analysis, the author recounts and analyses the issues involved in the dissolution of Yugoslavia as well as the

[10] Ratner uses this term in addressing the value of *uti possidetis* in his article, 'Drawing a Better Line: *Uti Possidetis* and the Borders of New States', 90 *AJIL* (1996) 590, at 597.

[11] See S.P. Sinha, 'Is Self-Determination Passé?', 12 *Colum. J. Transnat'l L.*, (1973) 260.

[12] See, e.g., Brilmeyer, 'Territorial Integrity versus Self-determination', 16 *Yale JIL* (1991) 177.

disintegration of the Soviet Union. However, rather than stopping at that point, he goes further to look at the newer fault lines that exist within the new Republics, including separatist conflicts such as those occurring in Chechnya, Abhkhazia and South Ossetia. In addressing all of these developments, he seeks to 'study' them within the framework of international law, at times stretching the discourse (notably in the analysis of the situation *vis-à-vis* Bosnia-Herzegovina) to seek to test its tensility.

Though framed with a special focus on the events in Eastern and Central Europe, the author examines the proposition that (what he terms) 'minority-people' have aspirations to self-determination, including at times the right to unilateral secession. The content of his argument is discussed below, but suffice it to say that the author goes beyond the bland assertion of human rights law that minorities have no right to self-determination; that this is a right reserved solely for 'peoples'.[13] In so doing he presents an analysis that is likely to be more realistic, though perhaps not completely in line with fast developing international human rights law standards.[14] The book itself is structured in three parts, with the final part consisting of a single chapter that seeks to draw the main arguments together. This is also followed by a Précis of the main arguments, which greatly adds to the clarity of the book as a whole. The opening part of the book focuses on statehood, including concepts such as 'subject of law', 'personality', the state as an international legal person, and the traditional criteria for statehood. This part covers old ground, but does so in a manner that is succinct, often using newer examples to demonstrate or critique various established positions in the doctrine. The second part of the book tackles what the author likes to refer to as the 'laws of self-determination'. This part consists of a historical analysis of the development of the doctrine, its relevance beyond decolonization (especially in its manifestation of 'internal' and 'external' self-determination) and the issue of secession. This is perhaps the most challenging and thought-provoking aspect of the book as the author tries to fit current events within the rubric of international law.

There are several aspects of this book that need to be flagged and briefly commented upon. The first of these is perhaps what the author refers to as 'internal' self-determination. While endorsing the generally accepted proposition that self-determination in a post-colonization phase should be exercised within the boundaries of the state, he asserts that in this sense internal self-determination ought to be seen as the right to participate in the decision making of the government. While the argument is one made by the human rights bodies, by itself it seems to trivialize self-determination significantly. After all, a right to participate in the decision making of the government does not necessarily grant minorities and other groups that aspire to self-determination any additional right than that available to all under the general rights rubric. Perhaps a greater focus on the manner in which such a right to participate can be exercised – for instance through a discussion of veto-bearing powers for minorities who are otherwise always potentially likely to be overruled by a majority – would have made this section more convincing. Also, while going beyond the mere expression of the

[13] As portrayed among other documents, in General Comment 12, 'The Self-determination of Peoples (Article 1)', 13 March 1984 (21st session) of the Human Rights Committee, and General Recommendation XXI of by the Committee for the Elimination of Racial Discrimination entitled 'The Right to Self-determination', 23 August 1996 (48th session). Available at http://www.unhchr.ch and in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Monitoring Bodies*, UN Doc. HRI/GEN/1/Rev. 5 of 26 April 2001, at 121, 189.

[14] Notably in the context of the self-determination of indigenous peoples see M. Scheinin and P. Aikio (eds), *Operationalizing the Right of Indigenous Peoples to Self-determination* (2000) and T. Orlin, A. Rosas and M. Scheinin, *The Jurisprudence of Human Rights Law: A Comparative Interpretive Approach* (1999). Also see Kingsbury, 'Reconciling Five Competing Conceptual Structures of Indigenous Peoples' Claims in International and Comparative Law', 34 *NYUJIL* (2002) 189.

rhetoric of self-determination, the author delves in some detail into the holders of the right to self-determination, concluding that these are essentially two categories: territorially-based people and those who are ethnic minorities (based on an analysis of Critescu's criteria for peoplehood). He rules out 'minorities' as right holders to self-determination, instead coining the term 'minority-peoples' which he then uses in the context of a discussion of unilateral secession. It is not clear what valence the concept of 'minority-peoples' adds to the understanding of international law, and this term is likely to further obscure the already difficult to define concepts of 'minorities' and 'peoples'.

One of the best sections of the book is the analysis of what the author terms a 'qualified unilateral right to secession' (Chapter VII). The main argument here is that while an absolute right to secession does not exist, a qualified right to secession could be seen as existing, under certain conditions such as:

(a) Existence of a minority-people;
(b) Territorial bond;
(c) Direct or indirect violation of the right of internal self-determination (including serious and widespread human rights abuses);
(d) Exhaustion of effective judicial remedies and realistic political arrangements for the realization of internal self-determination

This analysis is based on the study of international doctrine in the shape of General Assembly Resolution 2625 (XXV), the Vienna Declaration and judicial decisions, but primarily on the study of two cases of successful secessions (Bangladesh and Croatia) and three unsuccessful attempts (Chechnya, Abkhazia and the Republic of Serbian Krajina). The analysis is interesting, as are the explanations of why, in the opinion of the author, the latter three claims were rejected. However, the arguments are not entirely convincing, especially when the author discusses what he terms 'abuses' of the right to self-determination (declaration of independence without the will of the people) and the consequences (bar to statehood). At this stage the analysis also seems to fall short in that while it may be a general theory that unifies some of the cases focused on, it is hard to see this as being applicable in other theatres of ethnic conflict, notably in Kashmir, Sri Lanka and the Philippines amongst others.

Perhaps the central critique of this work is the author's firm belief in the 'laws of self-determination'. To reveal the existence of this law he feels justified in stretching certain arguments to fit situations where they were clearly not factors. It is debatable whether such an approach and sturdy defence of the principles of international law constitutes a useful strategy, or whether it simply seeks to impute a *post facto* meaning to events that were at the time clearly motivated by politics. In this context, the very essence of stating laws of 'self-determination' seems fruitless, especially when even what self-determination occurs does not occur at the behest of this law, nor does the existence of such law inform and explain the actions of the international community. The approach of suggesting that a law exists that can be called into play in such situations seems to fail to take into account the inherently political nature of the subject matter.

Furthermore, it would seem that even though the author's thesis is well contained, thoroughly researched and generally well argued, it contains some omissions, notably in addressing how the claims to self-determination of indigenous peoples fit within the model analysed herein.[15] Arguably if the *raison d'être* of self-determination is to be followed, theirs is the most straightforward

[15] See, e.g., P. Thornberry, *Indigenous Peoples and International Law* (2002); Barsh, 'Indigenous Peoples & the UN Commission on Human Rights: A Case of Immovable Object & Irresistible Force', 18 *HRQ* (1996) 782; Wiessner, 'Rights and Status of Indigenous Peoples: A Global Comparative and International Legal Analysis', 12 *Harv. HRLJ* (1999) 57; L. Maivan-Clech, *At the Edge of the State: Indigenous Peoples and Self-Determination* (2000) and Anaya, '*A Contemporary Definition of the International Norm of Self-Determination*', 3 *Transnat'l L. & Contemp. Probs.* (1993) 131.

case. Yet, the operation of politics above the realm of law dictates that these claims will be determined not on the basis of their relative legal conviction, but based on interest politics, thus severely casting doubt on the existence and operation of effective laws of self-determination.

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Wolfram Wormuth. ***Die Bedeutung des Europarechts für die Entwicklung des Völkerrechts*** (The Significance of European Law for the Development of Public International Law). Frankfurt am Main: Peter Lang, 2004. Pp. 408. €64 (paperback). ISBN 3–631–51943–5 (Published in German).

Originally written as a doctoral dissertation, supervised by Professor Michael Schweitzer at Passau University, the aim of this book is to evaluate the arguments put forward by Pierre Pescatore in his 1970 article, 'L'apport du droit communautaire au droit international public',[16] in the light of 30 dynamic years of European integration.

In Wormuth's view, the impact of European law on the development of public international law is threefold. Accordingly, the book deals with (i) European law as such, (ii) the interaction between the Union and its Communities on the one hand and with other subjects of public international law on the other, and (iii) the role of the EC/EU as a model or blueprint for regional economic integration.

The author's basic approach to European law is a straightforward, mainstream one (to which this reviewer fully subscribes). The Community legal order is perceived as an exceptionally well-integrated subsystem of public international law, reflecting the initial approach of the European Court of Justice (ECJ) from *Van Gend en Loos* to *Costa/ENEL* ('a new legal order of international law'). This is an approach which one could describe, as the author does, as 'revolutionary within, but not incompatible with, international law'. However, I would argue that this approach is not even 'revolutionary' within the theory of international law. As early as 1920 the Austrian scholar Hans Kelsen argued the principle of strict monism, requiring both direct applicability and supremacy over national law, within the realm of classic international law.[17] The revolutionary element is that this position was a minority view until the Community legal order evolved.

The author dismisses the *sui generis* theory of European law on the ground that the ECJ never sought to establish Community law as independent from public international law. What *was* sought was to create a legal system that was independent from the *national* legal systems of the Member States.[18] Unsurprisingly and *a fortiori*, the author perceives the EU legal order as part of the system of public international law. Pointing to the standard criteria of organ and treaty-making powers under classic public international law, he attributes legal personality to the EU, the criteria for which have so neatly been summed up by Rosalyn Higgins.[19]

Wormuth summarizes the first part of his study by referring back to Pescatore's term 'international law of integration' (*Internationales Integrationsrecht*) for the subsystem described so far. He points to the inherent flexibility of public international law in being able to both accommodate the protection of

[16] Pescatore, 'L'apport du droit communautaire au droit international public', 5 *Cahiers de droit européen* (1970) 501.

[17] H. Kelsen, *Das Problem der Souveränität und die Theorie des Völkerrechts. Beitrag zu einer Reinen Rechtslehre* (The Sovereignty Problem and the Theory of Public International Law. A Contribution to a Pure Theory of Law) (1920), at 145.

[18] See this writer in 9 *LIEI* (1995).

[19] 'If the attributes are there, personality exists. It is not a matter of recognition. It is a matter of objective reality.' R. Higgins, *Problems and Process. International Law and How We Use It* (1994) 48.