Index

Abkhazia (breakaway territory of Georgia) 78, 80, 88, 90–92
Aceh 98, 106
Acheson, Dean 89
Africa
  apartheid in South Africa 60, 61
decolonialization process 34
  Namibia case, 1971 102, 285
  Northern Cameroons case, 1963 102–3, 115, 125, 135, 136
  unilateral declaration of independence (UDI), Rhodesia 60
African Commission of Human and People’s Rights 40–41
Agenda for Peace 105
AKP (Justice and Development Party), Turkey 211, 212, 230, 236, 239
Al-Qaida 95
Åland Islands/Åland case 50, 103, 107
  Agreement, June 1921 26, 117
  Åland Islands Settlement, 1921 117
  autonomy of Islands, creation 116–17
  background of events 22–6, 27
  and Finland 23, 25–6, 98, 117
  Legislative Assembly 117
  population, support for EU membership 117
  and remedial right to self-determination 37, 41
  and Sweden 22, 23, 25, 98
Albright, Madeleine (US Secretary of State) 87
Algeria 30, 144
Anderson, Benedict 54
Anderson, Glen 296
Annan Plan, Cyprus 122
Anti-colonialism movement 11, 26–33, 58, 198
Anzilotti, Dionisio 18, 195
apartheid, South Africa 60, 61, 308
Arab Spring/Uprisings, 2011 95
Arangio-Ruiz, G. 195, 203
Argentina 120
Armenia 90
Athisaari, Martti 36, 50, 51
Atlantic Charter, 1941 26
Australia 127, 143
Austria 143, 204
Austro-Hungarian Empire 19
autonomy/autonomies 44–9
  ad hoc rules 106–7
  alternative to self-determination, seen as 44
  application to Québec 319–25
  beneficiary of autonomy arrangement 97–8
  constitutional right to autonomy, recognition 106
  East Timor case 109, 110
  global autonomies 97
  and internal self-determination 44–5
  models 46, 206
  new concept 46
  political link doctrine 109
  as ‘queen of minority protection instruments’ 45
  and referendums
    emergence into some other political status 122–8, 134–5
    establishment of a sovereign and independent state 109–16, 134
free association or integration
with independent state
116–22, 134
as instruments for
decision-making in
autonomy-related situations
97–137
subsequent assertion of
self-determination claims 51
sub-state government 106–7
terminology 44
territorial 45
Tokelau, New Zealand 109–10
Azerbaijan 90, 92
Badinter Commission, 1991
democratic principles and
self-determination norm 50, 65,
68, 74
postcolonialism and
self-determination 33, 34, 35
and Yugoslav crises 74
Balkans region 33, 91–2, 121
Bangladesh, establishment of 65
Barroso, José Manuel 179
Basque Country
aspirations 251, 252–3
attempts to obtain more autonomy
251–62
Basque Law on the Regulation and
the Calling of a Popular
Constitution (27 June 2008)
256–8, 269
erosion of autonomy 251, 252
identity 251
nationalism 254
old laws 254
political confrontation between
‘constitutional’ and
‘nationalistic’ blocks 251
‘Political Statute for the
Community of the Basque
Country’ (December, 2004)
253–6
Statute of Autonomy 251, 254
terrorist activity of ETA 251
see also Catalonia; Spain
Beni, Bolivia 127
Bermuda, independence referendum
109, 110, 115
bipolarity 85, 93, 94
see also Cold War, end of
Blair, Tony 87, 162
blue water theory 11
Bolivia 106, 126–7
Bonaire referendums, 1994 and
2004 120, 125
Bondsteel (military base) 87
Bosnia-Herzegovina 68, 74, 79, 86,
121
bounded pluralism 65
Boyle, Alan 165
Brest-Litovsk, Treaty of (1918) 23
Brexit, UK referendum on EU
membership (23 June 2016) 114,
121, 134
activation of Article 50, TEU 83,
143, 149–50
and Scotland 161
Buchheit, Lee C. 203, 295
Burns, Robert 190
Cameron, David 160
Canada
admission of new
territories/additional member
units 143
British Columbia 320
Canada Act, 1982 319
Clarity Act, 2000 157, 334, 336
Constitution 329
Constitution Act, 1867 319, 320,
321, 322, 323
Constitution Act, 1982 319, 320,
324
Constitution of 319–23
French Canadians 317
Province of Canada 318
Supreme Court 39–40, 69, 115,
129, 147, 157, 321, 330–34
see also Québec, Canada
Cassese, Antonio 202, 205
Catalonia
aspirations 251, 252–3
attempts to obtain more autonomy
251–62
as an Autonomous Community 130
Constitutional Court Judgment
31/2010 concerning Statute of
Autonomy 259–62, 269
causing a chain reaction 263–4
Constitutional Court Judgment
259/2015 272
consultations, 2014 146
current situation in and
independence claims under
international law 311–15
disconnection, initiating route
towards 271–5
erosion of autonomy 251, 252
Government 312
identity 251
independence claims from
international law perspective
283–315
and Kosovo 313
Law on popular consultations 271
Legislative Assembly 131
municipal referendums 108
Parliament 314
Declaration of Sovereignty
129–30, 264–9
Resolution 1/XI 271, 272
political confrontation between
‘constitutional’ and
‘nationalistic’ blocks 251
proper consultation, search for
269–71
referendum of 1 October
2017 130–31
self-determination
process (2012–2016) 263–75
and secession 78, 88
sovereignty, attempt to work
towards (2017) 107, 146
Statute of Autonomy 130, 251, 312
of 2006 258–9
Constitutional Court Judgment
31/2010 concerning 259–64, 269
Treasury and Social Security 272
see also Basque Country; Spain
Catanga (Democratic Republic of
Congo), case of 40–41, 63
Caucasus region 88, 91–2, 220
CCPR see Covenant on Civil and
Political Rights (CCPR)
Central and Eastern Europe,
self-determination process in 33
centralist legal theory 249
Charlottetown Accord, 1992 325
Charter of the United Nations
on colonial countries 11
entry into force, 1945 27
norms of international law codified
in 94
purposes and principles 63
self-determination
and democratic principles 57, 60,
61–2
and global order 60
legal framework of right of
self-determination of peoples
291
norms within Charter 27, 61–2,
131
and positive international law
215, 327
rights of 32, 39
territorial integrity principle 304
Chechnya
Constitution 122
referendum, 2007 122
Russian Constitutional Court
decision regarding (1993) 40
Cheney, Dick 87
China, anti-secession law 141
Churchill, Winston 26
cosmos, international law of 96
Cold War, end of 85
colonial right to self-determination 8,
11–13, 15, 28, 32
colonialism 29, 56, 285
acquiescence in 62
anti-colonialism movement 11,
26–33, 58, 198
colonial independence, and
remedial secession 62–8
democratic principles and self-determination norm 56–8, 60–62, 64, 70
injustice of system 285
’salt water’ 11, 58, 60, 64
Commission of Rapporteurs 23–4, 25, 26
Committee for the Racial Discrimination Convention 241
Committee of Jurists 23, 24, 26, 103
Committee on Social, Economic and Cultural Rights 240, 242
Committee on the Elimination of Racial Discrimination 101, 105, 111
The Concept of the Political (Schmitt) 88
consent of the governed concept 13, 14
Conservative Party, UK 83
Conservative–Lib-Dem coalition Government, UK 82
Contact Group 121
containment policy, US 90
Convention on the Elimination of All Forms of Racial Discrimination (CERD) 240, 241, 243, 244
Cook, Robin 87
Cooper, Robert 81, 83
cooperation, international law of 96
Copenhagen Declaration of the OSCE, 1990 233, 235, 237, 238
Cordillera Administrative Region of Philippines, referendum of 1998 127
Corsica, autonomy referendum, 2003 127
Council of Europe (CoE) 176, 234, 236
Covenant on Civil and Political Rights (CCPR) 43, 100, 107, 118, 136
dimensions of international and national constitutional law 99–100
referendums at sub-state level 131
right of self-determination in Article 1 100
Covenant on Economic, Social and Cultural Rights (CESCR) 118
Crawford, James 165
Crimea
annexation of 42, 82, 90
Russian justification 88, 89
electoral support for increased autonomy, 1994 127
illegal referendum (2014) 120
sub-state status in Ukraine 120
crimes against humanity 35
Croatia 68, 74, 121
Cuban missile crisis (1962) 89, 90
cultural nation concept 17, 18, 34
Curaçao referendums, 2005 and 2009 125
Cyprus 121–2
Czech Republic 167
Czechoslovakia, dismantling of 77
Daesh see Islamic State of Iraq and Syria (ISIS)
Declaration on Principles of International Law concerning Friendly Relations, 1970 see Friendly Relations Declaration, 1970
Declaration on the Granting of Independence to Colonial Countries and Peoples 62, 285
Declaration on the Rights of Indigenous Peoples, 2007 (UN) 47–8, 71, 72, 206
decolonialization process 12, 34
democratic principles and self-determination norm 57–8, 60, 63, 75
and Kurdish people 215
post-decolonization UN peace and security order 75
resolutions 63
De Gasperi-Gruber Agreement, 1959 205
democratic principles and self-determination norm colonial independence and ‘remedial’ secession 62–8
Index

defining the two separate concepts 56–7
democracy and self-determination as intersecting concepts 56–9
democratic governance 43–4, 57
democratic procedural standards 72
democratic right to self-determination 13, 14, 15
democratic values and definition of people for purposes of self-determination 72–5
international law of self-determination of peoples 60–72
least-common-denominator understanding of democracy 59, 76
liberal democratic values 58–9
'revolutionary-democratic dictatorships' 58
Denmark, and Greenland 113
Deudney, Daniel 93
Dinagat Islands 99
Donetsk, independence of 111
Drew, Catriona 43
Dworkin, Ronald 72–3, 76, 202

East Timor case 8, 28–9, 31, 50
independence referendum 109, 110
Edinburgh Agreement, 2012 148
effectivity principle 330
Erdoğan, Recep Tayyip 211, 212

erga omnes character of right to self-determination 31, 32
Eritrea 77, 93
Estonia
Constitution 132
Parliament 132
permissibility of referendums in sub-state contexts 131–3
Supreme Court 132–3
Ethiopia, Constitution of 1995 112
ethnic cleansing 35, 65, 75
ethno-nationalism 59, 74, 217
quasi-fascist 76

European Charter for Regional or Minority Languages, 1992 233, 236, 239
European Convention on Human Rights (ECHR) 176
European Court of Human Rights (ECHR) 176, 236, 298
European Union
accession negotiations 234
as a community of law (Rechtsgemeinschaft) 189, 190
Cyprus, membership of 122
and Scotland 178–89
Article 7 TEU 185
Article 48 TEU 186, 187, 189
Article 49 TEU 186, 188–9, 190
Article 50 TEU 183–6
Article 52 TEU 180–82, 184
as EU Member State, if independent 173–4
future standing in 178–80
Scotland as EU Member State, if independent 173–4
situation de lege lata 180–82
territorial modifications and breakups in the constitutions of European states 142–5
external self-determination 10, 11, 19, 67, 100, 290

distinguished from internal self-determination 53, 290, 329
and Kurdish people 214, 223, 224
and Québec 328, 329

see also internal self-determination; secession; self-determination

fairness principle 9, 43, 49
Falkland Islands issue 120, 123
Faroe Islands 98, 117, 225
Ferry, Luc 85
Fichte, Gottlieb 17, 18
Finland
and Åland Islands case 23, 25–6, 98, 117
independence (1918) 23, 117
nation-building 54
Parliament 117, 118
Autonomy and self-determination

Self-Government Act 117
First World War see World War I
Fischer, Joschka 87
Framework Convention on the
Protection of National
Minorities, 1994 233, 234–5, 236
France
Algerian independence from,
1962 144
Constitution of 1958 106, 112, 123,
144
Constitutional Council 124, 128
Front National (FN) Party 83
Matignon Accords, 1988 124
Nation concept in self-determination
17
New Caledonia, planned
independence referendum
107–8
referendums on territorial status 123
Franck, Thomas 43, 49, 217
Frederikshamn, Treaty of (1809) 22
free association 125, 128, 253, 254,
295, 297
or integration with an independent
state 12, 63, 104, 116–22, 123,
134, 300, 328
French Guyana, referendum of
2010 123
Friedmann, Wolfgang 96
Friendly Relations Declaration,
1970 38
categories concerning modes of
implementing the right of
self-determination 103–4
democratic principles and
self-determination norm 63–4
and Italy 200, 201
legal framework of right of
self-determination of peoples
293–5
Preamble 293
principle of self-determination 118
referendums, in autonomy-related
situations 103–5, 111, 115–16,
123, 125, 126, 136
safeguard clause 63–4, 300, 304,
305
saving clause 306
self-determination and secession 79
Front National (FN) Party, France 83
Gamsakhurdia, Zviad 80
General Agreement on Tariffs and
Trade (GATT) 175
Geneva Conventions, 1949 32
genocide 209
Genscher, Hans-Jürgen 33
geopolitics 84, 86–8, 90
Georgia, territory of 80, 81, 88, 90,
91
war with Russia (2008) 94
Germany
admission of new
territories/additional member
units 143
Constitution 139–40
nation concept in self-determination
17–18, 19, 20, 21
Gibraltar 120, 123
Giuliano, M. 195, 196
Goldstone, Richard 86
Good Friday Agreement, 1998 120,
121, 126, 144
governmental legitimacy, and
democracy 56
Greenland 98, 117, 137, 225
Inuit population 113
Self-Government Act, 2009 113,
126, 133
Guadeloupe, referendum of 2003 123
Guarino, Giancarlo 201
Haiti, coup in (1994) 65
Halliburton (American company) 87
HCNM (High Commissioner for
National Minorities) 233, 234
HDP (Kurdish party) 212, 229
Herder, Gottfried 17, 18, 34
High Commissioner for National
Minorities (HCNM) 233, 234
Hogard, Jacques 87
Hong Kong 98
Howse, Robert 44
human rights 43, 61
Index 345

European Court of Human Rights (ECtHR) 176, 236, 298
gross breaches/violations 50, 116
Human Rights Act, 1998 176
Human Rights Committee 108, 232, 240, 242
human rights norm,
  self-determination as in integral territories 68–72
self-determination as a dictum of 298–9
humanitarian intervention 94
Hussein, Saddam 209, 210
Ibarretxe 256
ICESCR see International Covenant on Economic, Social and Cultural Rights (ICESCR)
Ikenberry, G. John 93
independence referendums 3, 83, 107–10, 122, 161
Bermuda 109, 110, 115
constitutional permissibility 146–7
East Timor 109, 110
establishment of a sovereign and independent state 109, 110, 114, 115
free association or integration with independent state 118
increase in 128
permissibility of referendums in sub-state contexts 133, 134
planned, in New Caledonia 108–9
possible illegality of declaration of independence 110
practical questions 149
right to vote in 109
Scotland (18 September 2014) and autonomy 48–9, 107
lessons from aftermath 177–8
referendums on the emergence into any other political status 122
secession 82, 83
and secession 82, 83, 115
secession as new constitutional problem 137, 146, 149, 150, 158, 159
Tokelau, New Zealand 109–10, 115
visibility of 134–5
see also referendums
Independent International Fact-Finding Mission on the Conflict in Georgia 42
India 106
indigenous peoples, international legal status 70–71
individualism 49, 70
Indonesia 8
  East Timor case 8, 28–9, 31, 50, 110
  independence referendum 109, 110
institutional modes of self-determination 104
integral territories, self-determination as a human rights norm in 68–72
internal self-determination 10, 42–4
and autonomy 44–5
defining 43
distinguished from external self-determination 53, 290, 329
and exercise of self-determination 100–101
human rights norm, self-determination as in integral territories 68–72
and human rights provisions 43
and Kurdish people 214, 223–31
and secession rights 44
strengthening of 53–4
violation of right to 307
see also external self-determination; self-determination
International Convention on the Elimination of All Forms of Racial Discrimination 101
International Court of Justice (ICJ) 29
Kosovo Opinion, 2010 32, 36–7, 67, 86, 105, 301, 302
Northern Cameroons case, 1963 103
on right of self-determination 7
Autonomy and self-determination

‘Wall Opinion,’ 2003 (on Palestine) 31–2

Western Sahara case 101, 202–3, 289

International Covenant on Civil and Political Rights (ICCPR) 15, 27, 61, 62, 207, 285, 316, 327
and Italy 201, 202
and Kurdish people 215, 232, 239, 240

International Covenant on Economic, Social and Cultural Rights (ICESCR) 15, 27, 61, 215, 285, 316, 327
and Italy 201, 202
and Kurdish people 240–41

International Foundation of Electoral Systems (IFES) 99

International Labor Organization (ILO) 175

Convention on Indigenous Rights, 1991 71

international law

alliance-seeking on the international level 172–7

Catalonia’s independence claim from perspective of 283–315
of coexistence 96
of cooperation 96
declarations of independence not prohibited under 136
dimensions 99–109
independence of Catalonia 311–15
international organizations, membership 172–7

Italian school, birth of 192–4

no justification under, for recognition of independence of Kosovo 86

norms codified in UN Charter 94

public 103–6, 109
Quebec, right to independence under 326–31
Scotland 165–78

alliance-seeking on the international level 172–7

economic cooperation 175

lessons learned from Referendum aftermath 177–8

membership of international organizations 172–7

multilateral cooperation 176–7

recognition of states 171–2

Scottish Referendum and International law 165–8

security field 174–5

statehood question 168–71

of self-determination of peoples 60–72

colonial independence and remedial secession 62–8

internal self-determination 68–72

inviolability, self-determination as exception to 62–8

safeguard clause 63–4

self-determination of peoples as founding principle of current international peace and security order 57

and unipolarity 95

International Law Commission (ILC), Articles on State Responsibility 302

International Monetary Fund (IMF) 175

intertemporal law concept 14

intervention, military

in Kosovo 36, 37, 41, 50

prohibition of 42

Inuit population, Greenland 113

inviolability, self-determination as exception to 62–8

Iran 214, 220, 230

Iraq 209, 210–11, 213

Constitution 226

Kurdish people 220, 221, 222, 225, 227

Islamic State of Iraq and Syria (ISIS) 95, 211, 213

Israel, Occupied Palestinian Territory 32

Italy 192–207

advisory referendums, 2017 127

birth of modern school of international law 192–4
Index

Constitution 140, 151, 153, 154
Constitutional Court 127, 128, 151, 152, 153
nationality principle 192–4
‘positivist’ and ‘realist’ twist in legal scholarship 194–6
regional law 152
self-determination and Italian foreign policy after World War II 197–200
South Tyrol controversy 13, 20, 98, 198, 199, 203–7
views of ‘universalist’ reading of self-determination principle 201–3
see also Lombardy, Italy; Veneto, Italy
Ivanov, Igor 87
Jaume-Calvet, San 314
Jennings, Sir Ivor 30, 72
jus cogens 302, 303
Justice and Development Party (AKP), Turkey 211, 212, 230, 236, 239
Kant, Immanuel 73
Karakalpakstan, Republic of 112
Kashmir 106, 108
Kauzlarich, Richard 90
Keating, Michael 167, 173
Kelsen, Hans 27
Khrushchev, Nikita Sergeyevich 88
Kitts, St. see St. Kitts, Caribbean region
KLA (Kosovo Liberation Army) 82
Knopp, K. 170
Koskenniemi, Martti 192, 290
Kosovo 9, 10
abolition of autonomy by Milošević 81
Athisaari Report 36, 50, 51
background to conflict 35–6
and Catalonia 313
declared as autonomous province (1974) 35
final status 36

Finnish government statement regarding 41
ICJ Opinion of 2010 32, 36–7, 67, 86, 105, 301, 302
international civil and security presence in 36
‘manipulative administration’ of 86
NATO military operations against Serbia (1999) 36, 37, 41, 50, 86, 87, 88
poll, 2012 108
recognition of independence 51, 87
no justification under international law for 86
and Serbia/secession from Serbia 35, 36, 79, 86, 90, 91
Special Envoy for 36
sui generis situations 37, 92
Unilateral Declaration of Independence from Serbia (2008) 36, 37, 41, 67, 86
see also Yugoslavia (former Socialist Federal Republic of)
Kosovo Liberation Army (KLA) 82
Kremlin, Russia 88, 89
Kurdish people 208–46
autonomy and internal self-determination 223–31
background to conflict 208–9
formation of ‘nation state,’ problem of 220
genocide 209
groups 219, 220
internal self-determination 214, 223–31
in Iran 219, 220, 230
in Iraq 220, 221, 222, 225, 227
‘Kurdish question’ 208, 222, 246
Kurmanji speaking 219, 221, 222
languages 219, 221
minority protection as the minimal version of self-determination 231–44
nationalism 212
and nation-building 222, 231, 232, 245
numbers 221
Regional Government 211, 227, 228
self-determination 215–31
settlement areas 220–21
Sorani speaking 219, 221, 222
statehood question 211
in Syria 219
in Turkey 220, 221, 222, 229, 231, 236
uprisings 209
Zaza region 221–2
Kurdistan 77, 78, 88
Referendum Movement 108
Kuwait, attack by Iraq on 210

Labour Party, UK 82, 162
Latin America 34
Lattanzi, Flavia 202
Lavrov, Sergei 92
Le Figaro (French newspaper) 82–3
League of Nations 22, 117, 246
Council 23, 25, 98, 117
Covenant 284
Lenin, Vladimir 22, 283
lex specialis derogat legi generali principle 188
liberal democratic values 58–9
Lisbon Treaty, activation of Article 50
(29 March 2017) 83, 143
Locke, John 57
Lombardy, Italy
advisory referendum, 2017 127, 138
independence movement 151
Regional Council 154–5
Luhansk, independence of 111
Lund Recommendations on the Effective Participation of National Minorities in Public Life, 1999 47

Macau 98
Madrid Declaration (1975) 29
majority principle 14, 15
Mancini, Pasquale Stanislao 18, 192–4, 195
Mancini, Susanna 142
Martinique, referendum of 2003 123
Matignon Accords, 1988 124

Mauritania, Western Sahara case see Western Sahara case
May, Theresa 83
Mayotte, referendums of 2000 and 2009 123, 124, 128
Meech Lake Accord, 1987 324, 325
Memel Territory 98
Memorandum of Understanding on Aceh, Helsinki (2005) 106
‘Men of 1873’ 192, 194
Milošević, Slobodan 35, 74, 81, 86, 87, 91, 309
minority communities/minority protection 20
after WWI 20
Åland case 22, 24, 26
indigenous peoples, international legal status 70–71
as the minimal version of self-determination 231–44
rights of minority communities, problem for international legal order 69–70
secession and minorities within minorities 79–81
modern states 83
Moldova 78
Montenegro 113, 137
Constitution of the State Union of Serbia and Montenegro 112, 133
population 112
Montevideo Convention on Rights and Duties of States, 1933 169, 310
Morocco, Western Sahara case see Western Sahara case
Moynihan, Daniel Patrick 80
multi-ethnic federal states, breakdown 80
multi-polarity 93

Nagorno-Karabakh, referendum (2006) 111
Naivasha Agreement, 2005 106, 112
Namibia case, 1971 102, 285
nation, as decisive factor in self-determination 16–22
planned independence referendum 107–8
referendum of 1998 123, 124
right to self-determination 112
new states, territorial delimitation 34
Non-Self Governing and Trust Territories 12, 29, 62–3, 67, 296
Norris, John 91
North Atlantic Treaty Organization
see NATO (North Atlantic Treaty Organization)
Northern Cameroons case, 1963 102–3, 115, 125, 135, 136
Northern Ireland 108, 120, 121
Good Friday Agreement, 1998 120, 121, 126, 144
Northern Territory, Australia 127
Novorossiya 78
Öcalan, Abdullah 211
Oklopcic, Zoran 66
Organization for Security and Co-operation in Europe (OSCE) 233, 235, 237, 238
Ottoman Empire 208
Pakistan 106
Palestine 32, 172
Palmisano, Giuseppe 201
Pando, Bolivia 127
Paris Conference, 1946 197
Péan, Pierre 87
peoples, self-determination of 16–22
democratic values and definition of peoples 72–5
difficulty in classifying any collectivity as a ‘people’ 59
as founding principle of current international peace and security order 57
international law of self-determination of peoples 60–72
colonial independence 62–8
internal self-determination 68–72
safeguard clause 63–4
‘subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle’ 61, 63–4

legal framework of right of self-determination of peoples 291–305

meaning of ‘people’ 28
Friendly Relations Declaration, 1970 295–8
lack of fixed legal definition of ‘people’ 59, 61, 63, 76, 217
meaning of right of self-determination of peoples 289–91

overlapping with nation concept 16

‘people’ as classification based on situational properties 59
people entitled to vote 15

popular sovereignty 58
right of peoples to a unilateral non-colonial secession, whether 299–305

self-determination as a dictum of human rights 298–9
and territorial integrity 85

see also democratic principles and self-determination norm; nation, as decisive factor in self-determination; self-determination perpetuity, principle of 142

Peters, Anne 299

PJAK (Iranian party) 230

PKK (Kurdish-nationalist terror organization) 209, 211, 228, 229, 230
plebiscites 99, 116
digital 108

see also referendums
Polisario (Western Sahara liberation movement) 30

political status, other, referendums on the emergence into 122–8, 134–5

Pomerance, Michla 32

popular self-determination 60

popular sovereignty 58, 76

Portugal, East Timor case 31, 110
postcolonialism 33–7
post-modern states 81, 83, 84
pre-modern states 81, 83, 84

Prodi, Romano 179

Proudhon, Pierre-Joseph 88
provinces, versus republics 35
public international law 103–6, 109

Puerto Rico 98, 119
emergence into some other political status 125–6

Putin, Vladimir Vladimirovich 86, 89

Quadri, R. 195, 196

Québec, Canada 316–38

autonomy principle, application to 319–25
Canadian House of Commons on 75

Canadian Supreme Court judgment 39–40, 69, 115, 129, 147

Charlottetown Accord, 1992 325

claim for additional autonomy within Canada 323–5

Constitution of Canada and autonomy of Québec 319–23

Fundamental Rights Act, 2000 335, 336, 337
historical background 317–18

independence, right to 326–31
under international law 326–31
as Lower Canada 317

Meech Lake Accord, 1987 324, 325

referendums autonomy perspective 113, 114–16, 149
democratic legitimacy 148
on the emergence into any other political status 122

independence of francophone province (1980 and 1995) 147

of May 1980 318, 324
of October 1995 318

permissibility of, in sub-state contexts 130
at sub-state level 130, 131
Index

secession 78, 80, 92, 147
right to pursue under Canadian law 331–8
Secession Reference 334
unilateral non-colonial secession 301–2

racial discrimination 15
Rajoy, Mariano 314
Rawls, John 73, 80
referendums
advisory 127
and autonomy
autonomy-related decisions, decision-making in 97–137
establishment of a sovereign and independent state from perspective of 109–16
free association or integration with independent state 116–22, 134
Brexit, UK referendum on EU membership (23 June 2016) 114, 121, 134
activation of Article 50, TEU 83, 143, 149–50
and Scotland 161
constitution-building 109
controversial situations 136
devolution 126
on the emergence into any other political status 122
facultative nature of self-determination referendum 101
on free association/integration with an independent state from autonomy perspective 134
function 97, 134
independence see independence referendums 137
visibility of 134–5
international and national constitutional law dimensions 99–109
municipal 108
regional 150–55, 158
Scottish referendum of 18 September 2014 and autonomy 48–9, 107
democratic legitimacy 148
establishment of a sovereign and independent state 114, 115
impact on EU law 143–4
and international law 165–8
lawmaking competences 149
lessons from aftermath 177–8
referendums in sub-state contexts 133–4
referendums on the emergence into any other political status 122
secession 82, 83
secessionist claims 147–8
and territorial modifications/breakups 143
secessionist claims 146–50
status 119, 137
at sub-state level 109, 135–6
Catalonia (2017) 130–31
Estonia 131–3
permissibility in sub-state contexts 128–34, 150–55
Québec 129, 130
regional 150–55
Scotland 133–4
Tatarstan Republic 129, 130
Veneto, Italy 127, 128–9
territorial disputes, resolution 116–22
territorial modifications/breakups 143
uses of 97, 134
and World War I 20
see also autonomy
remedial right to self-determination 36, 37–42, 49, 54
colonial independence and ‘remedial’ secession 62–8
sui generis situations 41–2
‘remedial’ secession 36, 62–8, 177, 223, 306
Renan, Ernest 17, 55
Republic of Cyprus 121
Republic of Ireland 120–21
Constitution of Ireland 121
Autonomy and self-determination

republics, versus provinces 35
responsibility to protect (R2P) 94, 218
‘revolutionary-democratic
dictatorships’ 58
Rhodesia
Friendly Relations Declaration, 1970 63–4
unilateral declaration of independence (UDI) 60
Rice, Condoleezza 91, 92
Roosevelt, Franklin D. 26
Russia/Russian Federation
Åland case see Åland case
Constitutional Court 129
Crimea, annexation of 42, 82, 88, 89, 90
Kremlin 88, 89
and post-Soviet secessions 88–93
Swedish-Russian war, 1809 22
war with Georgia (2008) 94
see also Soviet Union, former
Saba referendum, 2004 120, 125
Saint Germain, Treaty of (1919) 19
Saint Maarten referendums, 1994 and 2000 125
Sakwa, Richard 84
Salmond, Alex 160
‘salt water’ colonialism/theory 11, 58, 60, 64
Santa Cruz, Bolivia 127
Scheuner, Ulrich 7
Schmitt, Carl 88
Scotland 160–91
critical analysis
Article 50 TEU, comparison with 183–6
problem-solving, recommendations for 186–9
‘withdrawal of subjective rights’ argument 182–3
devolution max 148, 159
devolution package, 1997 162–3
Devolution Report 166
Edinburgh Agreement, 2012 148
and European Union 178–89
Article 7 TEU 185
Article 48 TEU 186, 187, 189
Article 49 TEU 186, 188–9, 190
Article 50 TEU 183–6
Article 52 TEU 180–82, 184
future standing in 178–80
Scotland as EU Member State, if independent 173–4
situation de lege lata 180–82
government 169
historical background 162–5
international law aspects 165–78
alliance-seeking on the international level 172–7
economic cooperation 175
lessons learned from Referendum aftermath 177–8
membership of international organizations 172–7
multilateral cooperation 176–7
recognition of states 171–2
Scottish Referendum and international law 165–8
security field 174–5
statehood question 168–71
internationally delimited territory 169
nationalist-oriented government 113–14
as new state 166, 167
Parliament 114, 163
European and External Relations Committee 165
population 169
recognition of states 171–2
referendum of 18 September 2014 and autonomy 48–9, 107
democratic legitimacy 148
establishment of a sovereign and independent state 114, 115
impact on EU law 143–4
and international law 165–8
lawmaking competences 149
lessons from aftermath 177–8
referendums in sub-state contexts 133–4
referendums on the emergence into any other political status 122
secession 82, 83, 147–8
and territorial
modifications/breakups 143
Rest of the United Kingdom (RUK) as the continuator state of the UK as new state 167
reversion to pre-1707 status 167
Scotland Act, 1998 160, 163
Scotland Act 1998 (Modification of Schedule 5) Order 2013 114
Scotland Act, 2014 114
Scottish Independence Referendum Act, 2013 114
Scottish National Party (SNP) 83, 162, 164
secessions/secessionist movements abuse of right to block majority decisions 142
actual separation vs. separation process itself 158
categories 77–8
consensual 300
democratic legitimacy 148, 156
democratic right to secede 140
enforcement of secession 141
ethnic or regional secessionism 66 explicit legal prohibitions against 141
geopolitics 84, 86–8, 90 granting a constitutional right to secede 142
and independence referendums 115 and internal self-determination 44 justification of 141 and minorities within minorities 79–81 mutual agreement 141 in the national constitutional law 139–42

permissibility of regional referendums at sub-state level 150–55
political-territorial perspective 140
post-Yugoslav 85–8
Québec’s right to pursue under
Canadian law 331–8
recent tendencies 146–50
’remedial’ 36, 62–8, 177, 223, 306
right to secede 5, 6, 11, 26, 142, 145, 207, 288, 306 absolute 298 automatic 39 constitutional 139 general 38 lack of 51, 53, 330 remedial 37–41, 54 unilateral 330
Russia and post-Soviet secessions 77, 88–93
secession as new constitutional problem 138–59
dimension of secession in national constitutional law 139–42
legal possibility to secede 145
permissibility of regional referendums at sub-state level 150–55
secessionist claims 146–50
territorial modifications and breakups in constitutions of European states 142–5
types of secession 155–7
secessionist claims vis-à-vis post-modern, modern and pre-modern states 81–5 and self-determination 77–96 similarities and differences 77–9, 92
territorial integrity 142
Third World countries 77–8
types of secession 155–7
unilateral see unilateral secession voluntary secession, potential 113
Second World War see World War II self-determination autonomy seen as alternative to 44
broadening of principle following World War II 118
colonial see colonial right to self-determination
concepts/definitions 8, 9, 10–16, 18, 49, 316
and democracy see democratic principles and self-determination norm
early practice 26–33
entitlement to right of 98
evolution 49
external see external self-determination
as human rights norm in integral territories 68–72
internal see internal self-determination
justifications for claims 7–8
Kurdish people 215–31
legal nature of claim for 30
legitimacy of inclusion within state of a particular territorial population 56–7
minority protection as the minimal version of 231–44
modern doctrine 219
narrow application following WWI 116, 122
opponents 80
past and present relevance of discussion on 7–10
political 140
post-World War II 26–37
remedial right to see remedial right to self-determination
restrictions 14
right of as meta-norm of participation 100–101, 135
and secession see secessions/secessionist movements
territorial changes following acts of 7–8
twentieth century as the century of 7
‘universalist’ reading of principle, debate on 201–3
self-government 107
Serbia 35, 79, 90, 91
Constitution of the State Union of Serbia and Montenegro 112, 133
NATO military operations against (1999) 36, 37, 41, 50, 86, 87, 88
see also Kosovo
Sevastopol area, illegal referendum (2014) 120
Sévres, Treaty of (1920) 21
Shevardnadze, Eduard 90
Sierra Leone, coup in (1997) 65
Sint Eustatius referendums, 2005 and 2014 120, 125
Slovakia 167
Slovenia 121
SNP see Scottish National Party (SNP)
social contract 57
Socialist Federal Republic of Yugoslavia (SRJY) see Yugoslavia (former Socialist Federal Republic of)
socialist right to self-determination 15
soft power 90
Somalia 197–8
Somaliland 77, 78, 111
South Africa apartheid 60, 61, 308
Friendly Relations Declaration, 1970 63–4
Namibia case, 1971 102
South Ossetia (breakaway territory of Georgia) 78, 80, 88, 90–92
referendum (2006) 111
South Sudan, independence 8, 9, 10, 77, 93, 113
regulated secession 111–12
South Tyrol controversy 13, 20, 98, 198, 199, 203–7
sovereignty constitution-making power 100
permanent 225
popular 58, 76
of states 50, 94–5, 135
territorial 11
Index

Soviet Union, former
attempt to install nuclear missiles in Cuba (1962) 89, 90
Bolshevik Government 118
federal units in 80
post-Soviet secessions 88–93
Soviet-Russian Constitution, 1918 118
unravelling of 8–9, 77
see also Russia/Russian Federation; Yugoslavia (former Socialist Federal Republic of)

Spain
Autonomous Cities 247
Autonomous Communities 247, 251, 254, 259, 265
autonomy agreements 249
Basque Country see Basque Country
Catalonia see Catalonia
Constitution 106, 131, 140, 150–51, 171
and self-determination 248, 261, 311–12, 314
Constitutional Court 266
attempts of Basque Country/Catalonia to obtain more autonomy 252, 257, 262
Constitutional Court Judgment 76/1983 248
dimensions of international and national constitutional law 107, 108
Judgment 42/2014 129, 261, 264, 269, 272, 273, 275, 276–7
Organic Law 270
permissibility of referendums in sub-state contexts 129–30
and secession 146, 149
model 248, 249
as multinational quasi federal unitary state 247, 250
nationalities and regions 250
perspectives 275–8
'State of Autonomies,' convoluted character 247–50

Western Sahara case see Western Sahara case
St. Kitts, Caribbean region 112, 133
states acting in accordance with clashing visions of the world 94
balancing by 93
bandwagoning by 93
break-up of see secessions/secessionist movements
central state and single sub-national territories 10
European, territorial modifications and breakups in constitutions of 142–5
integration with an independent state 12, 63, 104, 116–22, 123, 134, 300, 328
exercise of self-determination 119–20
legitimacy of inclusion within state of a particular territorial population 56–7
modern 83
multi-ethnic federal, breakdown 80
new European Community Guidelines on Recognition of New States 310
resulting from fragmentation of former Yugoslavia 65
Scotland as 166, 167
territorial delimitation 34
post-modern 81, 83, 84
pre-modern 81, 83, 84
recognition of 171–2
regional 150–55
Scotland as new state 166, 167
Rest of the United Kingdom (RUK) as continuator state of the UK 166
statehood question 168–71
sovereign and independent establishment from autonomy perspective 109–16
integration with from autonomy perspective 116–22
sovereignty of 50, 94–5, 135
sub-states see sub-states
territorial inviolability of international order’s defence of 61–2
treaty arrangements between 105 see also nation concept in self-determination; nationalism; nationality principle
status referendums 119
Sturgeon, Nicola 161, 167, 168
sub-states
as autonomies 128
Crimea 120
governments 106–7
referendums at sub-state level permissibility of 128–34, 150–55 regional 150–55
republics within former Yugoslavia 34–5
Yugoslavia (former), sub-state republics within 34–5
Sudan 8
sui generis situations
Kosovo 37, 92
remedial right to self-determination 41–2
Scotland 167–8
Suni Muslims 213
Sweden 181
and Åland Islands case 22, 23, 25, 98, 117
Swedish-Russian war, 1809 22
Switzerland 143
Sykes-Picot Agreement 208
Syria 213, 214, 219, 246
Rojava region 228–9
Tadic, Boris (of Serbia) 86
Talbott, Strobe 91
Tamil Eelam, independence from Sri Lanka 108
Tarija, Bolivia 127
Tatarstan Republic 129, 130
Teitel, Ruti 44
tempus regis actum principle 14
territorial autonomy 45
territorial disputes, resolution through referendums 116–22
territorial integrity principle 11, 135 Charter of the United Nations 304 democratic principles and self-determination norm 60, 61, 64, 66 and jus cogens 303 secession as new constitutional problem 142, 145 self-determination and secession 85, 87 territorial inviolability of states 62–8 territorial modifications and breakups, constitutions of European states 142–5 admissibility issues 144 admission of new territories/additional member units 143 EU Treaties 143, 144 internal modifications 143 no provision for internal territorial reorganization within EU law 143 territorial integrity principle 145 territorial sovereignty, right to 11 terrorism 95, 209, 211, 213, 251 Texas v. White (1869) 139 Third World countries, and secessions 77–8
Thornberry, Patrick 38, 223
Todd, Emmanuel 35, 84
Tokelau, New Zealand free association issue 118 independence referendum 109–10, 115
Toynbee, Arnold J. 55
Transdniestria 78
Transdniestria, referendum (2006) 111
Treaty of Brest-Litovsk, 1918 23
Treaty of Frederikshavn, 1809 22
Treaty of Saint Germain, 1919 19
Treaty of Sévres, 1920 21
Treaty of Versailles, 1919 19, 116
Index

Turkey 209, 214
Criminal Code 241
Justice and Development Party (AKP) 211, 212, 230, 236, 239
Kurdish people 220, 221, 222, 229, 231, 236
Turkish Cyprus 121, 122
UKIP (United Kingdom Independence Party) 83
Ukraine 82–5, 88–90, 94
autonomous entities created by 128
Crimea, status of 120
Eastern Ukraine 82, 111
see also Crimea
UNDRIP (UN Declaration on the Rights of Indigenous Peoples), 2007 47–8, 71, 72, 206
unilateral declaration of independence (UDI), Rhodesia 60
unilateral secession
and negotiated secession 155–7
not permitted under public international law 105, 130
unilateral non-colonial secession legal requirement for, as measure of last resort 305–11
whether right of peoples to 299–305
unipolarity 95
United Kingdom
autonomous entities created by 128
Brexit referendum on EU membership (23 June 2016) 114, 121, 134
activation of Article 50, TEU 83, 143, 149–50
and Scotland 161
Conservative Party 83, 162
Conservative–Lib-Dem coalition Government 82
devolution referendums 126
Falkland Islands issue 120, 123
Gibraltar issue 120, 123
Jacobite uprisings 162
Labour Party 82, 162
Lisbon Treaty, activation of Article 50 (29 March 2017) 83, 143, 149–50
May 2015 election 82–3
Rest of the United Kingdom (RUK) as the continuator state of the UK 166
memberships 172–3
as new state 167
see also Northern Ireland; Republic of Ireland; Scotland
United Kingdom Independence Party (UKIP) 83
United Nations
Admission of New Members Committee 174
anti-colonialism movement 11, 26–33, 58, 198
Charter see Charter of the United Nations 27
and colonialism 56
Convention on the Elimination of All Forms of Racial Discrimination (CERD) 240, 241, 243, 244
Declaration on the Rights of Indigenous Peoples, 2007 (UNDRIP) 47–8, 71, 72, 206
General Assembly see United Nations General Assembly (UNGA)
Human Rights Committee 108, 232, 240, 242
International Covenant on Civil and Political Rights (ICCPR) 15, 27, 61, 62, 285, 316, 327
and Italy 201, 202
and Kurdish people 215, 232, 239, 240
membership criteria 174
Security Council see United Nations Security Council (UNSC)
Autonomy and self-determination

Western Sahara problem 29
United Nations General Assembly (UNGA) 27–9, 36, 101, 215, 294
Declaration of Independence to Colonial Countries and Peoples, 1960 62, 285
Friendly Relations Declaration, 1970 see Friendly Relations Declaration, 1970
on indigenous peoples 71
rejection of ‘Bevin-Sforza’ compromise 197
Resolutions 27, 28, 61–5, 103, 170, 197–201, 204–6, 287, 288, 292
Special Committee on Decolonization established (1961) 198
Special Political Committee 204
United Nations Security Council (UNSC) 50, 65, 174, 299
permanent seat 174
Resolutions 36, 60, 64, 199, 285
United States admission of new territories/additional member units 143
containment policy 90
Iraqi invasion, 2003 210
and Puerto Rico 98, 119, 125–6 see also Latin America
uti possidetis principle 25, 34, 35, 80
Uzbekistan, Constitution 112

van Rompuy, Herman 180
Védrine, Hubert 87
‘veil of ignorance’ 80
Veneto, Italy advisory referendum, 2017 127, 128–9, 138
digital plebiscite, 2014 108
independence movement 151
Versailles, Treaty of (1919) 19, 116
Vienna Convention on Succession of States in Respect of Treaties, 1978 166

Vienna Declaration on Human Rights, 1993 38, 39
Waldron, Jeremy 44
war on terror 95
Western Sahara case 8, 12–13, 28–30, 31
International Court of Justice (ICJ) 101, 202–3, 289
White, Nigel 89
Wilson, Woodrow 283–4
14 points (January 1918) 13–14, 49, 215
principles of 21
proclamations by 21
programme 19
Wilsonian requests for self-determination 14, 15, 19, 116
World Conference on Human Rights 39
World Trade Organization (WTO) 175
World War I and injustice 14
Italian participation 195
and Kurdish people 215
Middle Powers 19, 23
minority rights and self-determination 20
narrow application of self-determination principle following 116, 122
political goals of the Entente during 8
post-war peace-settlement and modern concept of self-determination 49
quests for self-determination prior to 8
self-determination discussion 18, 19, 20
territorial changes following 20
World War II ending of colonialism following 8
international law of self-determination of peoples following 60
self-determination following 8, 26–37
broadening of 118
and Italian foreign policy 197–200
principle of self-determination 284

YPG (Syrian-Kurdish organization) 212–13, 228

Yugoslavia (former Socialist Federal
Republic of)
crises of 1991–92 50, 66, 74, 85–6
dismemberment process 33

dissolution of 8–9, 68, 77, 92, 120, 167
emergence of new states from
fragmentation of 65
federal units in 80
and postcolonial practice 33, 34–5
post-Yugoslav secessions 85–8
Serbs in 35, 36
sub-state republics within 34–5, 312
see also Kosovo; Soviet Union, former

Zanzibar 98
Zapatero, Rodríguez 256