

Table of Contents

<i>Acknowledgements</i>	v
<i>Tables of Cases</i>	xiii
<i>Table of Materials</i>	xv
Chapter 1 Democracy and Statehood in International Law	1
1 Introduction	1
1.1 Background	1
1.2 Context and Existing Literature	3
1.3 The Main Objectives of the Book	10
1.4 Structure of the Book	12
2 International Law and (Non-)democratic States	14
2.1 Democracy, Elections and Human Rights	14
2.1.1 Elections and the Procedural Understanding of Democracy	15
2.1.2 The Substantive Definition of Democracy in Relation to Human Rights	17
2.2 Democracy and International Human Rights Law	19
2.2.1 Linking International Law and Democracy	19
2.2.2 The Right to Political Participation and Democracy	21
2.3 A Democratic Bias in Post-Cold War International Law?	23
2.3.1 The Theories of Normative Democratic Entitlement and Democratic Peace	23
2.3.2 Interpretations of 'Democratic Rights' in the UN Framework	29
2.3.3 Democracy and Internationalised Regime Change in the Practice of States and UN Organs	32
2.4 The Place of Democracy in Post-1990 International Law	38
3 The Emergence of States in International Law	39
3.1 The Statehood Criteria	39
3.2 Recognition and Non-Recognition of States	43
3.3 Defining the State in International Law	46
3.3.1 Problems With the 'State-as-a-Fact' Approach	48
3.3.2 The Statehood Criteria and Problems with the Self-Evident-Fact Approach	49
3.4 Territorial Integrity and the Emergence of New States	50
3.5 The Development of the Obligation to Withhold Recognition in Practice	54

3.5.1	Manchukuo and European Annexations	54
3.5.2	The Turkish Republic of Northern Cyprus	56
3.5.3	Southern Rhodesia	57
3.5.4	The South African Homelands	59
3.6	The Emergence of New States as an Internationalised Process: a Place for Democracy?	61
Chapter 2 The Practice of Post-Cold War State Creations: The Statehood Criteria, Democracy and Human Rights		65
1	Introduction	65
2	The Emergence of States as a Result of Domestic Consensus	66
2.1	The Dissolution of the Soviet Union	66
2.2	The Dissolution of Czechoslovakia	71
2.3	The Independence of Eritrea	72
2.4	South Sudan: Independence Stemming from the Peace Agreement	74
3	The EC Guidelines and EC Declaration: Beyond the Statehood Criteria	78
3.1	Background to the Yugoslav Crisis and the EC Involvement	78
3.2	Substance of the EC Guidelines and the EC Declaration	80
3.2.1	The EC Guidelines	80
3.2.2	The EC Declaration	81
3.3	Democracy, Human Rights and a Commitment to Peace in the EC Guidelines	83
3.3.1	Democracy in the EC Guidelines	83
3.3.2	Human Rights in the EC Guidelines	85
3.3.3	The EC Guidelines and a Commitment to Peace	86
3.4	The EC Guidelines and EC Declaration in Action	89
3.4.1	Background: the SFRY	89
3.4.2	Slovenia	91
3.4.3	Croatia	93
3.4.4	Bosnia-Herzegovina	96
3.4.5	Macedonia	98
3.4.6	The FRY	100
3.4.7	State Creations, International Involvement and Democracy in the Territory of the SFRY: A Synthesis	104
4	The Independence of Montenegro	109
5	International State-making and Democracy-making in East Timor	112
5.1	East Timor: Historical Background	112
5.2	Transition to Statehood and Democracy	114

6 Kosovo as an Attempt at Informal Collective Creation of a Democratic State	117
6.1 Background to the Kosovo Crisis	118
6.2 Resolution 1244 and International Territorial Administration	122
6.3 Failed Attempts at Settlement of the Final Status	125
6.4 The ICJ's Advisory Opinion on Kosovo	128
6.5 Issues of Statehood and Recognition	130
6.6 Kosovo: an Attempt at Collective Creation of a State and its Political System	134
7 Conclusion	137
Chapter 3 Democratic Aspects of the Right of Self-Determination	139
1 Introduction	139
2 Self-determination: Development, Democratic Pedigree and Limitations	141
2.1 Self-determination and its Democratic Pedigree: the Political Principle of Self-determination in the Twentieth Century	141
2.2 The Territorial Integrity Limitation: the Link Between Internal Self-determination and Democracy	143
3 Self-determination, Governmental Representativeness and Multiparty Democracy	145
3.1 The Scope of Governmental Representativeness in the 'Safeguard Clause'	146
3.2 Self-determination, Representativeness and Non-democratic Governments	149
4 The Right of Self-determination, Political Participation and Choice of Political System	153
4.1 Self-determination and Political Participation	153
4.2 Self-determination: Realisation of the Right Through Democratic Elections?	155
5 Democracy and the exercise of the Right of Self-determination in its Internal Mode	157
6 The 'Safeguard Clause' and Remedial Secession	158
6.1 The Theory of Remedial Secession	159
6.2 Effects of Remedial Secession Through Recognition	161
6.3 Remedial Secession and State Practice	162
6.3.1 The East Pakistan (Bangladesh) Precedent	162
6.3.2 Other Possible Examples of Remedial Secession	164

7 Democratic Principles and External Exercise of the Right of Self-determination	169
7.1 Québec: Attempts at Secession and Popular Consultation	171
7.1.1 Background to the <i>Québec</i> case	171
7.1.2 The <i>Québec</i> Case and the Effects of Popular Consultation	172
7.1.3 The Québec Situation and the Clarification of Popular Consultation Standards	174
7.2 Popular Consultation Standards in the Territory of the SFRY	176
7.2.1 Slovenia	177
7.2.2 Croatia	177
7.2.3 Bosnia-Herzegovina	180
7.2.4 Macedonia	182
7.2.5 The Absence of a Referendum in the FRY	183
7.3 The Demise of the Soviet Union and Popular Consultation	185
7.3.1 The Baltic States	185
7.3.2 The Establishment of the CIS and Independence Referenda	187
7.4 The Absence of a Referendum in Czechoslovakia	190
7.5 The Independence Referendum in Eritrea	191
7.6 The Independence Referendum in East Timor under the Auspices of the UN	191
7.7 The Independence Referendum in Montenegro and EU Involvement	193
7.8 The Independence Referendum in South Sudan	195
7.9 The Absence of a Referendum in Kosovo	196
7.10 Procedural Standards at Independence Referenda Summarised	197
8 Conclusion	199
Chapter 4 Delimitation of New States and Limitations on the Will of the People	202
1 Introduction	202
2 The Creation of New States and the <i>Utī Possidetis</i> Principle	204
2.1 The Development of <i>Utī Possidetis</i>	204
2.2 The Application of <i>Utī Possidetis</i> Outside of the Process of Decolonisation	206
2.3 Non-colonial Situations: Internal Boundaries and International Borders	208
3 The Nature and Relevance of Internal Boundaries in the Post-1990 Practice of New International Delimitation	210

3.1	The Québec Situation and its Significance for the Determination of International Borders	211
3.2	Post-1990 State Creations and the Practice of Border-confinement	214
3.2.1	International Delimitation in the Territory of the Former Soviet Union	214
3.2.2	The Czech–Slovak International Delimitation	219
3.2.3	Colonial Pedigree, Non-colonial Situation: Eritrea	220
3.2.4	Colonial Pedigree, Non-colonial Situation: East Timor	221
3.2.5	Colonial Pedigree, Non-colonial Situation: South Sudan	222
3.2.6	Re-examining the application of <i>Uti Possidetis</i> and Border-drawing in the Territory of the SFRY in Light of Post-1990 State Practice	225
3.2.7	Montenegro	230
3.2.8	Kosovo	231
4	Conclusion	233
	Chapter 5 Democratic Statehood: Conclusions	235
1	Democracy and Statehood: An Analysis from Two Perspectives	235
2	The Emergence of New States in the Post-Cold War Practice	235
3	Contemporary International Practice and the Legal Status of the Statehood Criteria	238
3.1	State Creation as a Political Process of Overcoming a Counterclaim to Territorial Integrity	238
3.2	The Obsolete Concept of Premature Recognition and the Legal Relevance/Irrelevance of Montevideo	239
3.3	Democracy in the Contemporary Theory of Statehood	241
4	The Operation of and Limits on Democratic Principles Within the Right of Self-Determination	242
4.1	Democracy and the Qualification of ‘Representative Government’	242
4.2	Secession, Human Rights and Democracy	244
4.3	The Will of the People and the Creation of New States	247
4.4	The Will of the People and the Delimitation of New States	248
4.5	State Creation, International Delimitation and Limitations on the Will of the People	250
5	Final Remarks: The Place of Democracy within the Process of State Creation	252
	<i>Bibliography</i>	255
	<i>Index</i>	267