The regulation of cross-border migration has, in recent years, become one of the most pressing political and legal questions facing the international community. Chronic poverty in much of the South is accompanied by rapid population growth. The gap between average per capita incomes in North and South has become a chasm. Satellite broadcasting – and to some extent the internet –, coupled with a general relaxation of state control over the media, enables images of almost unimaginable opulence to be transmitted daily to the poorest villages of the South. At the same time, the collapse of the Iron Curtain has made both legal and clandestine travel from the South to Europe far easier. In 2000, it was estimated that there were 175 million migrants in the world or roughly 2.6% of the global population; this number can only rise in future.

Against this background of global migration on an unprecedented scale, in 2001 the Swiss Federal Office for Refugees launched the Berne Initiative, which was intended to bring together governments, international organisations, non-governmental organisations and academics to develop an inter-governmental framework for migration policy. As part of the Berne Initiative, it was decided to produce a study of the current international law of migration, which should both set out established norms and identify gaps. Such an initiative was undoubtedly timely, as although several notable works exist on migration law, they have all become rather dated.

This book’s eighteen chapters range over many aspects of the law of migration. Different chapters cover issues such as the individual’s right to leave and to return to his country, the return of persons to their states of origin and to third states (and especially the increasing use of readmission agreements), nationality, migration and security, forced migration, the rescue of asylum-seekers at sea, family unity, labour migration, the effect of WTO rules on migration, development and migration, integration of migrants and health and migration. One remarkable omission is any treatment of statelessness and especially the increasing problem of de facto statelessness. Moreover, the analysis of the development of regional norms concerning migration, by organisations such as the Council of Europe or the European Union, is rather brief.

While some of the topics covered are staples of any work on migration, others are more innovative. Peter van Krieken’s analysis of health and migration, for example, as well as considering the right to health in general, analyses the impact an individual’s state of health may have on decisions concerning his admission, settlement in and
expulsion from a state. In his contribution on the integration of migrants, Walter Kälin, while noting that international law neither requires nor prohibits assimilationist policies, analyses how the exercise of rights protecting freedom can be reconciled with rights promoting equality. Steve Charnowitz looks at the impact of the General Agreement on Trade in Services rules on movement of persons, concluding that though these rules have great potential to affect international migration, they are so far only in a nascent stage.

However, if the range of the book is broad, it is also shallow. Most contributions are limited to fifteen pages, in which the author can do no more than sketch the outlines of his subject. In particular, space precludes any detailed examination of national legislation or state practice; this does not, however, prevent several contributors from making sweeping generalisations about developing trends in state practice without any supporting references. There are inevitably some points with which to quibble. David Martin refers to the decision of the US Supreme Court in *Sale v. Haitian Centers Council* without mentioning the subsequent vehement criticism of this judgment by the Inter-American Commission for Human Rights which has led the English Court of Appeal (in *R v. Immigration Officer at Prague Airport ex parte European Roma Rights Centre*) to treat *Sale* as wrongly decided. In his analysis of the return of persons to their countries of origin, Gregor Noll dismisses as an unwarranted induction the opinion of doctrinal writers – citing only two although in fact opinion on this point is largely unanimous – who have argued that a duty to readmit on the part of the state of origin is a logical correlate of the power of expulsion. Professor Noll’s claim that there is no evidence of a norm of customary law on this point is undermined by his omission of any reference to the classic judgment of Judge Read in *Nottebohm* setting out the synallagmatic nature of the relationship which arises between the protecting state and the receiving state following a decision to admit an alien.

The merit of this book is that it provides a wide ranging and up-to-date introduction to most aspects of migration law. However, it is certainly no more than an introduction; anyone seeking a thorough treatment of the topics raised will need to return to the older but more detailed textbooks on migration.

_Toby King_

European Commission

1. The views expressed are entirely personal and do not represent the views of the European Commission.
This book deals with the United Nations Convention on Contracts for the International Sale of Goods (CISG). It contains a collection of cases and arbitral awards to date that have been interpreted and applied the CISG on an article by article basis.

The CISG is one of the products of the United Commission on International Trade Law (UNCITRAL) that was created in 1966 by the UN General Assembly to further the harmonization of transnational commercial law. The Convention was adopted on a diplomatic conference in Vienna on 11 April 1980 and came into force on 1 January 1988. The CISG has nowadays been adopted by 62 nations. Unification of the rules, which govern contracts for the international sale of goods, is to be considered the main goal of the CISG.

The Draft Digest is divided in two parts. The first part of the book contains the presentations that were given at a conference at the University of Pittsburgh School of Law where the Draft Digest was presented (on 7 February 2003). The second part of the book contains the Draft Digest itself.

In the first part different respected authors share their views on one or more of the articles of the CISG commenting on and making use of the Draft Digest itself. In most contributions it is emphasized that the Draft Digest is to be considered as the next step in the harmonization of the international sales law. According to most scholars the compilation of court and arbitration cases will promote the uniform interpretation of the Convention and will reduce the uncertainties, which the pure text of the CISG poses.

The Draft Digest can be found in the second part of the book. Five experts in the field have prepared the case reviews for the Draft Digest. Franco Ferrari, Professor of International Law at the Verona University School of Law, Italy (Arts. 1-13, 78); Peter Winship, Professor of Law at the Southern Methodist University, United States (Arts. 14-24, 66-77); Ulrich Magnus, Professor of Law at the University of Hamburg, Germany (Arts. 25-34, 45-52); Harry Flechtner, Professor of Law at the University of Pittsburgh School of Law, United States (Arts. 35-44, 79-88); and Claude Witz, Professor of Law at the University Robert Schuman, France and the University of the Sarre, Germany (Arts. 53-56).

In his preface on this book the Secretary of UNCITRAL, Jernej Sekolec, points out that the goal of the Draft Digest is limited to identifying the views and trends in interpretation of the CISG by national courts. To achieve this goal the Digest compiles the cases, in analytical fashion, to indicate differences, giving the reader the sense of the number of courts having taken one or the other position. This is combined with comments about the intended meaning of the provision pursuant to the travaux préparatoires. In the Draft Digest no reference has been made to academic writing nor do the
reviewers criticise court decisions or give personal views.


To illustrate the structure of the Draft Digest I will turn to Article 46 of the CISG, the provision that concerns the remedy of specific performance. The Draft Digest on this provision, written by Ulrich Magnus, gives first some background information on the meaning and purpose of the provision and presents afterwards the general requirements for a plaintiff who demands specific performance. The commentary on Article 46 CISG is concluded with an explanation of the different criteria of Article 46(1), (2) and (3).

The Draft Digest on Article 46 gives in my opinion an accurate and quite complete view of the relatively little case law that has appeared on this issue. The sole focus on case law however leaves open those issues on which no case law has been occasioned. The text of Article 46(3) for instance provides the buyer with a right to repair if the delivered goods do not conform to the contract, unless this is unreasonable having regard all circumstances. The commentary on Article 46(3) is very short in dealing with the question which circumstances should be taken into account in determining whether repair is unreasonable, since almost no case law has appeared on this issue. In academic writing on this topic different relevant circumstances have been selected, but, as noted, scholarly writings are outside the scope of the Draft Digest, see, e.g., Staudinger/Magnus, Art. 46 Rdnr. 60-63,1 and Jussi Koskinen, CISG, Specific Performance and Finnish law, 1999.2

In the same vein the relation between the different criteria of Article 46(1), (2) and (3) have not been explicitly highlighted. Article 46(1) for instance disallows the buyer the general right to compel performance when the buyer has already resorted to a remedy inconsistent with the remedy of specific performance. Neither Article 46(2) concerning delivery of substitute goods nor Article 46(3) concerning repair of non-conforming goods, refer to inconsistent remedies. The question whether the criterion of Article 46(l) is to be applied as well in the case of Article 46(2) and 46(3) is not addressed since no case law exists on that point.

The Draft Digest is well-arranged with the numbering of the paragraphs. When reference is made in a footnote to another provision of the CISG it would however have been even more user-friendly if not only that provision was mentioned but also the specific numbers of the paragraphs where the relevant information can be found.

The Draft Digest is the first official catalogue of cases from around the world that interpret and apply the CISG. The Draft Digest gives the reader not only a clear overview of the provision he is interested in, but pays in its commentary also attention to the broader context in which the provision operates.

According to the Secretary of UNICTRAL a definitive version of the Digest is going to differ ‘slightly’ from the Draft Digest and it is announced that the text of the Digest will be updated as developments in case law occur. The comprehensive overview of
case law in the Draft Digest, in combination with the presentations held at the conference in Pittsburgh makes this book a valuable source of information for scholars, as well as practitioners.

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2. Publication of the Faculty of Law of the University of Turku, Finland, at <http://www.cislaw.pace.edu/cisg/biblio/koskinen1.html>.


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The legal aspects of the external human rights policy of the European Union (EU) have increasingly become subject of academic scrutiny, as expressed in a growing list of publications on the matter. In the introduction to her book Elena Fierro claims to be distinctive in her approach and different from the ‘largely theoretical’ previous studies, among other features by approaching the topic ‘from an EU optic’, by putting emphasis on ‘the positive potentialities of the human rights clause’, and by introducing the reader into ‘the reality of the EU’s relations with third countries from a human rights conditionality angle’ (p. xvii). Such distinctiveness is a claim hard to maintain. In fact, it is a real opportunity lost that Fierro apparently did not have the chance to examine some of the relevant works written and published just before hers, particularly Mielle Bulterman’s *Human Rights in the Treaty Relations of the European Community: Real Virtues or Virtual Reality* (Intersentia, Antwerpen 2001) and my own *Integrating Human Rights into Development Cooperation: The Case of the Lomé Conventions* (Kluwer Law International, The Hague 2000). Each work covers part of the same material that is reviewed by Fierro, linking theoretical analysis to implementation efforts and other practical realities. The latter explores the positive dimensions of human rights and development cooperation extensively. Thus, there was much scope for seeking support for shared ideas (such as on the potential of positive human rights action, instead of always emphasizing punitive measures), for contrasting different opinions (e.g., on the legality of EU aid suspensions for lack of good governance), and more generally for a comprehensive
assessment of the practice of EU policy in this area.

Fierro provides a competent and detailed technical overview of the legal framework for EU external relations, the evolution of EU external human rights policy in relation to European and non-European countries, as well as the practice of drafting and, to a limited extent, the practice of applying human rights clauses in bilateral cooperation agreements and in Regulations such as the one providing for the EU Generalized System of Preferences. The author deliberately presents matters from a European perspective and depends heavily, and often solely, on EU material. For assessing the cases of countries that have been exposed to EU human rights policy measures this does not always result in a balanced picture. The position of countries that resist(ed) inclusion of the standard human rights clause into their framework cooperation agreement with the EU, including Australia, New Zealand, Mexico and China, is represented in the book. However, much less insight is provided into the position of other EU partners involved, be they Albania, Russia, Cuba or other African, Caribbean and Pacific (ACP) countries. Fierro’s commitment to presenting the EU perspective sometimes results in conflicting loyalties. For example, at pages 310 to 312 she runs extra miles in order to justify the fact that so far the EU has only applied human rights inspired sanctions to African (ACP) states. Further on in her study she contradicts herself when she exposes and criticizes the bias against the ACP as compared to Russia (p. 347), Cuba and China (p. 379). Overall, Fierro’s position on the influence of the inequality between the EU and its developing country trade and cooperation partners, and on the political aspects of formulating and implementing human rights clauses, is not entirely clear.

The concluding chapter routinely summarizes some of the major findings of the book. Beyond the specific cases analyzed in the book, concrete recommendations as to what could and/or should be done to improve the EU’s approach to human rights conditionality in practice are limited. The chapter and book ends in an unnatural way by exploring at length whether human rights clauses can also be a solid legal basis for positive conditionality. As, according to the author, ‘a positive interpretation of the human rights clause has been the transversal argument [in the book] all along’ (p. 385), this analysis comes rather late in the day.

It is both notable and regrettable that the book does not incorporate the more recent developments and materials up to 2002-2003. The bibliography confirms the picture that the manuscript was last (and it seems only in part) updated in mid-2001. Thus, Bulterman’s book, mentioned above, which was available in 2001, is curiously still listed as forthcoming in the bibliography and hardly referred to in substance. Chapter 2, on the ‘Evolution of the Human Rights Policy in the EU/EC External Relations’, for developments in ACP-EU relations oddly stops at Lomé IV (1989). Lomé IV bis (1995) and the Cotonou Agreement (June 2000), which both added major elements to the human rights policy involved and/or to the scope for its implementation, are only given their due much later on in the book (chapter IX). The review of the case of Cuba (pp. 188-191) ends in 1999 and thus fails to report on the interesting developments taking place in the year 2000. These culminated in Cuba withdrawing its request to accede to the Cotonou
Agreement and in its formal admission to the ACP Group as first ever non-party to an ACP-EU Agreement, in response to EU support for a resolution on Cuba passed by the United Nations Commission on Human Rights.

Finally, it is a pity that neither the author nor publisher of the book took the trouble of a last editing round. As a result, the text contains an annoying amount of easily avoidable typing errors which too often affect the readability of the book.

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The 1990s were a particularly testing time for the right of peoples to self-determination in international law. Previously, self-determination had been essentially restricted to the populations of European colonial territories, with the right to secede from states broadly and (Bangladesh aside) successfully denied. However, as the communist regimes of Eastern Europe began to fall like so many dominos, this comfortable view was challenged with the collapse of Yugoslavia and the Soviet Union. The international community responded to this new outbreak of self-determination with principles honed in the colonial context. The right was to be applied only to defined territorial units, whose borders were protected by _uti possidetis_, a principle which had previously been used to uphold colonial borders in Africa. There have been various questions about the wisdom and success of this policy, and one of the biggest of those questions, Kosovo still remains unanswered. It is this issue of the maintenance of boundaries, which Märt Johanson, specifically inspired by the Yugoslav crisis, takes up in her doctoral thesis _Self-Determination and Borders_.

The focus of the book is on the relationship between self-determination and the principles that uphold territorial boundaries, and its central argument is for a change in that relationship. Johanson sees these principles as impeding self-determination, and disregard for peoples’ rights is, in turn, detrimental to international peace. She argues, therefore, for their re-evaluation. Self-determination and territorial principles, in her opinion, should be viewed in light of the principles in Articles 1 and 2 of the UN Charter and broader perspectives of peace and the international community. None of these perspectives are new and it may well be argued that self-determination is already interpreted in this way. But, Johanson draws distinct implications from this balance of
principles, above all, that the location and function of borders should be looked at in
light of self-determination. Her concern, in particular, is the effect of boundary changes
on borderland populations. Johanson’s book is tightly structured around this argument.
This is not a general study of self-determination, but can be best seen as a case for a
new interpretation of the right in the context of borders. Most of this argument is made
within legal texts, although the work does also conclude with two case studies on Yugo-
slavia and Central Asia.

Johanson’s perspective on self-determination does require a distinctive approach to
the right. Thus, in chapter 2, proceeding from the ICJ’s definition in Western Sahara
of self-determination as, ‘the need to pay due regard to the freely expressed will of
peoples’,¹ she proposes a rather gentle interpretation of the concept. Her self-determi-
nation is not the blood-stained right that rose from the chaos of the French Revolution and
the trenches of the First World War, and for which, ‘poets have sung and … patriots
have been ready to lay down their lives’.² Instead, it is a principle of ‘“decisionary
inclusion” – the consideration of the peoples concerned’ (p. 13), which functions as part
of a wider goal of promoting international peace. She also argues for a wider perspective
on the subjects of self-determination. The right should not be equated with nationality,
but applied to a wider range of populations than just nations and peoples, in particular,
borderlanders. Johanson wisely avoids arguing that applying self-determination neces-
sarily means changes to the location of borders, although this is also not excluded. Her
main concern is the role of self-determination in relation to the function of borders.

With a reinterpreted right of self-determination on one side of her balance of prin-
ciples, Johanson then turns in chapter 3 to the territorial principles weighed against it.
There has been a tendency to throw these principles together. But, Johanson specifi-
cally distinguishes the roles of three of them: territorial integrity, uti possidetis and
the ‘stability of frontiers’, described by Johanson as a form of estoppel most notably
seen previously in the Temple case.³ This is a useful clarification and Johanson goes
into considerable detail in distinguishing the various interpretations of uti possidetis.
However, the chapter is more than a simple examination of those principles. Johanson
adopts a negative tone throughout, throwing doubt, in particular, on the status of uti
possidetis as a general principle of international law. She is, of course, not alone in
this. Other authors have also raised questions about the status or scope of the principle.⁴
Perhaps, though, Johanson is sometimes overzealous in this regard. In particular, how
does her evaluation of territorial integrity in the UN Charter as a ‘weak’ right, which
creates no duties for states to protect the integrity of others (p. 63), square with her
avowed goal of promoting international peace?

There is also a notable omission with the absence of the principle of the inviolability
of frontiers. Considering her focus on Yugoslavia it is curious that she should overlook
one of the main territorial principles involved in its dissolution. The inviolability of
frontiers can be found in the Helsinki Final Act 1975,⁵ which was drawn up to guide the
relations of European states. From this basis, it was added in 1991 to the EC Guidelines
on the Recognition of New States in Eastern Europe,⁶ and apparently applied by the
It is hard to see why it should have been overlooked here. There might also be an objection to the way that Johanson characterises these principles as ones that have been argued to ‘preclude’ self-determination (p. 56). Territory is, in fact, one of the most important ties in nationality. Principles like territorial integrity and *uti possidetis* may not simply demarkate lines in the sand, but the boundaries of nations. Thus, Croatia, for example, did not just argue in the UN that its borders should be protected because of international legal norms, but for the reason that they had been part of the nation, ‘for over a 1,000 years’. It is well known that the Colonial Independence Declaration, GA Res. 1514(XV) of 1960 did not apply the principle of territorial integrity to a state, but to a ‘country’. In the *Western Sahara* opinion both Morocco and Mauritania argued that this principle protected the integrity of their nations. The integrity of a nation or a people is, in fact, a basic element of the right of self-determination. It can, of course, be argued that the integrity of one nation or people may come at the expense of another and the continuing problem in self-determination is how to separate overlapping and competing claims. However, to suggest that the denial of self-determination is simply caused by the application of territorial principles is to overlook the territorial aspect of nationality, which is vital in understanding the relationship between self-determination and borders.

Having outlined the principles of self-determination, territorial integrity, *uti possidetis* and the stability of frontiers, Johanson attempts to reconcile them with a new balance in chapters 4 and 5. However, much of the momentum from the earlier chapters here is lost in lengthy and rather generic discussions on issues such as the difference between rules and principles and whether there is an international community (the conclusion that it depends on your perspective (p. 146) is not very enlightening). Arguably much of this was unnecessary. Johanson’s basic points that UN Charter principles are interrelated, that a fundamental purpose of the organisation is the promotion of peace and that principles should be interpreted in light of their context could have been convincingly made in just a handful of pages. There was no need to spread them out over two chapters.

In chapter 6 we come to the core of Johanson’s thesis – the role of frontiers. While international law, she argues, tends to treat frontiers as the same, they may, in fact, differ considerably in their purpose, function and effects. Borders can have important political effects on populations, for example, changing minorities in majorities and vice versa, such as in the creation of Northern Ireland or the Yugoslav republics. Johanson emphasises that borderlanders are most effected by changes in the location and function of borders, and explores these different aspects. She points out that the change from an internal frontier into an external or international frontier may not necessarily impact most on border populations. In the case of the Ferghana Valley divided between Uzbekistan and Kyrgyzstan (and Tadjikistan) it was not the internationalisation of frontiers with independence in 1991 that had most effect on locals, but Uzbekistan’s closure of the border in 1999.
Johanson argues that self-determination involves an ‘obligation to show consideration’ (p. 247) for others. She emphasises that borders should be looked at in terms of their purpose, functionality and effect. She proposes various models by which boundaries can be made more efficient and the impact of border changes on locals reduced. There may be border zones, transborder protected areas, régimes for the joint exploitation of natural resources and even condominiums. Johanson uses cases like Fisheries to highlight that cross-border legal régimes should reflect the interests of effected populations. These are good points and could have benefited from further analysis.

Another factor that could have been considered is the relationship between borders and the political units they encompass. A change in borders, after all, stems from a change in the nature of political units. Johanson points out, probably quite rightly, that when borders in Africa, Yugoslavia and the Soviet Union were drawn up they were not intended to be state borders. However, their ultimate status as international frontiers also depended on the subsequent development of the political units that they encompassed. A significant element in the break up of Yugoslavia and the Soviet Union, for example, was the relationship between their constituent republics and respective governments. This has important implications. If the dissolution of those states was the result of governments in those republics asserting their independence, why shouldn’t they just continue within the frontiers of those political units? Johanson does note in her study of Yugoslavia that the leaderships of the republics were able to build up considerable powers under Tito. This, though, is not evident in her examination of Soviet Central Asia, where she neglects the formation of local ‘mafias’ in the Brezhnev era.

A further question about Johanson’s proposals is whether in interpreting self-determination as a duty to show consideration for others, she actually has the most appropriate right. If her intention is to improve the position of borderlanders, is self-determination actually the best way to do this? A distinctive feature of minorities in borderlands as opposed to more centrally located ones, is that separation may be a viable option. The fact is that the creative interpretation of self-determination can cut both ways. Johanson may expand the right into non-national forms, but there is equally plenty of practice which equates it with national interpretations and a right of independence. She may want to use self-determination to raise questions about borders, but isn’t that exactly what Slobodan Milošović did, though with very different motives, when he said that Serbia’s borders with the other Yugoslav republics were an ‘open question’.

If Johanson’s concern is with the position of borderlanders and issues such freedom of movement, cultural rights, trade and environmental protection, it may be better for her to address those issues in terms of human rights and other relevant principles of international law. It can be noted that in the recent Wall opinion, which concerned Israel constructing what Johanson would no doubt call a ‘hard’ frontier across the West Bank, self-determination was introduced essentially as a corollary for other obligations under international law. Indeed, some aspects of the West Bank Barrier were not considered in light of self-determination at all, but individual economic and social rights. It is, of course, unfair to bring up a case which came out after Johanson had defended her thesis.
Nonetheless, it underlines that the impact of borders can be looked at not just in light of self-determination, but a broad range of potential obligations. It may have been wiser for Johanson not to have put all her eggs into the basket of self-determination, which, quite frankly, often tends to scare people.

Having outlined the various principles and considerations involved in the situation of borders, Johanson then moves to her case studies on Yugoslavia and Central Asia. In both cases, she paints a fascinating picture of how borders and indeed whole nations have been drawn and redrawn in the history of those regions. However, both case studies are also too short. In particular, a book titled ‘Self-Determination and Borders’ should have more than a page on the Badinter Commission on Yugoslavia. Moreover, given Johanson’s emphasis on taking account of the context of borders and the interest of borderlanders, it is surprising that she provides almost no information on border populations in these studies. Despite presumably having read Misha Glenny’s vivid portrait of the Krajina Serbs in *The Fall of Yugoslavia* (it features in her bibliography), there is nothing on Serb borderlanders in Croatia or anywhere else. Nor does she go into detail on the Ferghana Valley, the focus of her other case study. What were the causes of conflict in that particular region? Was it the division of a social and economic unit, as she seems to suggest (pp. 237-239), or did it relate to an inflow of migrants into the valley and competition for resources? In neither case study are the situations in borderlands explored, which rather undercuts her claim of the importance of taking them into account when considering borders.

It might also be asked why Johanson limited her study to Yugoslavia and Central Asia, or if she wanted to consider the former Soviet Union, why choose Central Asia and not the Caucasus? Given her enquiry into the purpose of borders, Nagorno-Karabakh should have deserved some attention, considering that it has been claimed in this case that this border was badly drawn, not by neglect but by malicious intent. An Armenian enclave inside Azerbaijan, it has been claimed, was created specifically to destabilise Armenia and Azerbaijan and leave them weak and divided, and thus easier to control from Moscow. However, Nagorno-Karabakh receives only a line and other disputes in the Georgia and Chechnya are relegated to just a single footnote. A reviewer, of course, always has the luxury of arguing for more examples. Nonetheless, a wider and more in-depth study would have undoubtedly strengthened Johanson’s argument.

This question of depth is, unfortunately, a problem in this work. While Johanson’s study does raise some interesting questions, the answers to many of them seem to lie beyond its scope. In particular, one of basic assumptions behind the thesis, that the general application of *uti possidetis* may be ‘faulty and indeed dangerous’ (p. 28), is never really proven or disproven. To really answer this would require examining the number of borders to which *uti possidetis* was applied, the number of conflicts that had taken place in those territories and the causes of those conflicts. The approach of upholding existing administrative borders would also have to be compared to situations where borders have been changed to coincide with ethnic criteria or popular wishes, such as in the Paris Peace Conference of 1919 or the partition of India. There is no doubt, though, that such an investigation would be a substantial task.
In conclusion, Johanson should be commended for bringing the question of self-determination and boundaries together – a topic that many might shy away from – and for coming up with some interesting perspectives in light of boundary function. Boundary function does have important implications for international law and this book sheds light on its potential legal applications. Nonetheless, the study is also somewhat restricted by its relatively limited scope, which prevents it from addressing many questions about the complex relationship between borders, peace and self-determination.

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Introduction and general evaluation

There is no shortage of exposés on racial discrimination and the most appropriate ways of combating racism. Attention to this phenomenon has only increased in the 1990s, culminating in the proclamation by the UN General Assembly of 2001 as the International Year of Mobilization against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the ensuing 2001 World Conference.

This book focuses on developments in this regard in Europe, and analyses more specifically the endeavors of the European Union and the Council of Europe. It is surely an excellent initiative to trace the respective developments in these organizations and offer a comparative analysis, while providing an update in comparison with the earlier writings in this respect.

Nevertheless, as will be developed infra, these updates are in several chapters suboptimal (taking the publication year as a reference point). When looking at the overall structure of the book, certain gaps in coverage (or missed opportunities) can arguably be identified, as well as seeming discrepancies in relative length of the chapters. It is a pity that no attention is given to the development of a Constitution for the EU, as that was arguably well under way when most chapters related to that organisation were submitted. The omission of related developments in the OSCE needs to be questioned.

Even though one has to guard against over ambitious projects, it could have been interesting to include UN developments as well, more specifically in terms of (the supervisory practice of) the International Convention against All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the Convention on the Elimination of Discrimination Against Women and the Convention on the Rights of the Child. Interesting lines of synergy between the supervision (both review of periodic reports and complaints procedure in so far as they are available) of these UN Conventions and the developments in the European organizations could have been explored. Another ‘gap’ that can be hinted at concerns the absence of a contribution dedicated to the question of affirmative action and its delicate relationship with the prohibition of discrimination.
Prior to discussing and analyzing the respective chapters, some more structural remarks are in point. The lack of a proper conclusion which ties together the strands developed in the book is regrettable. Concerning the relative weight given to the chapters, it is striking that in contrast to most chapters (about 20 pages long) the first chapter by Gerards takes up 60 pages. This is especially surprising as she does not really focus on the question of racial discrimination, but gives a well known overview of the overall non-discrimination jurisprudence of the European Court of Human Rights. Per Johansson’s chapter on comparing national and community anti-discrimination law also takes up 40 pages, but at least that can be justified in terms of the actual content and coverage (see further infra). Finally, the order of the annexes does not seem entirely logical as it is neither chronological nor grouped per organization.

Chapter by chapter evaluation

The edited volume consists of three parts, preceded by an introduction and followed by annexes, without however an intervening overall conclusion. Part I focuses on the Council of Europe anti-discrimination standards and Part II on the EU anti-discrimination legislative measures, while Part III offers a more comparative perspective between the levels of the Council of Europe, the EU and the Member States. It is commendable that each part pays due attention to either the implications for national legislation or the actual implementation at national level of the standards adopted by the organizations concerned. The combination of standard setting at international and national level undoubtedly contributes to the overall strength of the volume.

The introduction basically provides an overview in the form of a brief summary of the content of the chapters of the book. Notwithstanding a brief sketch of the various institutions of the Council of Europe and the EU and the broad historical developments concerning racial discrimination, it does not really provide a further explanation for the more precise content and respective weight of the chapters, nor the reasons why the volume is confined to Europe. Nor does it explain why it excludes a discussion of the relevant OSCE developments and of the emergence of a draft constitution for the EU.

Part I consists of three chapters. The first chapter by Gerards provides a detailed analysis of the non-discrimination jurisprudence of the European Court of Human Rights. While chapter one is structured around Article 14 ECHR, the second chapter discusses the 12th Additional Protocol and its autonomous non-discrimination provision. The third and final chapter of Part I provides a succinct discussion of ECRI’s General Policy Recommendation no. 7 on National Legislation to Combat Racism and Racial Discrimination (model legislation).

It was already highlighted that Gerards’s chapter’s length is disproportional in comparison with the other chapters. The article is obviously the result of very thorough research, which seems to build on the author’s doctoral thesis which discusses this jurisprudence in even more detail. While there is, in principle, nothing wrong with building
on chapters of one’s doctoral thesis, it does seem problematic that this chapter does not seem to be really focused on the extent to which questions of racial discrimination have been addressed by the Court. There may not be abundant case law on this topic, but arguably it would have been more interesting and more in line with the overall focus of the book to try to identify the reasons explaining this virtual absence of case law on racial discrimination, instead of repeating the general theory on the non-discrimination jurisprudence of the Court. Similarly, even though she addresses so-called suspect classifications, there is no analysis or beginning of explanation why it was only in 2004 that the Court seems to take the position that race is such a suspect classification. Was there really no further research that could be done, for example of non-admissibility decisions, which could shed some light on this arguably late development? Would it not have been relevant to refer to older judgments that seemed to acknowledge the special opprobrium attached to racial prejudice even though they were not Article 14 judgments (like ECHR 23 September 1994, Series A No. 298, Jersild v. Denmark) Arguably, the editors were not specific enough in their request to the author or they did not monitor closely what the actual focus of the chapter was.

Admittedly, Gerards develops some interesting issues pertaining to the general Article 14 jurisprudence, such as the problematic features of the comparability test as a first hurdle, the theory about the substantive reasons for different levels of scrutiny and about the flexible and substantive theory on heightened scrutiny. However, it is a pity that these remarks are not placed in a race-context so as to suit the focus of the edited volume better.

Gerards’s contribution is, overall, well structured and systematic, but there are the occasional glitches, such as the apparent internal contradictions on pages 37, 47-48, and 56, the not too convincing delimitation between the ‘legitimate aim’ and the ‘proportionality’ component of the justification and a tendency to repeat the same points over and over again. In this respect the conclusion, which is a longish summary of the various issues she addresses in her contribution, only strengthens this impression. Unfortunately, the conclusion also highlights the lack of specific attention to questions of racial discrimination.

Jeroen Schokkenbroek’s chapter, which focuses on the 12th Additional Protocol to the ECHR is a logical sequence to a chapter on Article 14, since it analyses the coming about of this Additional Protocol, introducing a general non-discrimination guarantee. While this chapter contains a most interesting analysis of the relationship between the general equality principle and the prohibition of discrimination, as well as of the scope of positive state obligations in terms of this general prohibition of discrimination, it similarly disappoints a reader who expects an outspoken focus on questions of racial discrimination (in addition to a more general analysis). In this case there is a brief reference on pp. 66-67 to the ‘sparse Strasbourg case law on racial discrimination’, but there is no further attempt to explain this sparse case law, which was (apparently) not picked up by the editors. Once again this could be qualified as a missed opportunity in a book focused on combating racism.
This evaluation can nicely be contrasted to that of the final chapter of Part I on the Council of Europe standards since that focuses on a particular measure developed by the European Council against Racism and Intolerance. Giancardo Cardinale provides a very enlightening discussion of the preparation of ECRI’s General Recommendation on National Legislation to combat Racism and Racial Discrimination. As the World Conference against Racism had underlined, effective national legislation plays an essential role in the fight against racism. Hence, guidelines that are aimed at improving the quality of national legislation in this respect can only be welcomed, especially at a time when states are reviewing and revising their legislation anyway with a view to the full implementation of the EU’s Race Directive.

Cardinale correctly points out that ECRI, in line with its extensive mandate, adopts a very broad definition of racial discrimination and applies the prohibition of discrimination to a very broad range of areas. This entails that in many respects the Recommendations go further than existing international standards. As regards the definition of racial discrimination, it should be highlighted that ECRI includes also language, religion and citizenship in addition to the more common ‘race and ethnic origin’. Furthermore, the material scope of the prohibition of discrimination as developed in the ECRI Recommendation is practically unlimited. While this broader focus as to grounds of differentiations entails certain differences in approach, there are nevertheless several parallels with the Race Directive. One important parallel is the extensive attention for making the prohibition of discrimination effective, which is, inter alia, manifested in the requirement for the establishment of national specialized bodies.

The clear focus of this chapter on questions of racism and combating racial discrimination make it very appropriate for this book. The chapter offers furthermore a useful insight in the rationales of various of the choices made be ECRI, while following the structure of the Recommendations themselves. Arguably it would have further added to the value of this chapter if there would have been a proper conclusion, which also could have referred to the two previous chapters, thus tying together the various Council of Europe chapters.

Part II consists of 4 chapters concerning the EU anti-discrimination legislative measures, each providing an interesting perspective. The first two chapters together provide a detailed account of the coming into being of the Race Directive, throughout which the most sensitive issues and related divergent stances are unraveled. Parmar’s chapter speculates on the extent to which the extensive jurisprudence of the ECJ in terms of gender discrimination could be transposed to or offers reliable predictions for the future jurisprudence in terms of racial discrimination. Johansson concludes the EU part of the book by a critical review of the national implementation of the Race Directive, thus adding an essential perspective to gauge the effectiveness of this EU measure.

The first two chapters nicely complement one another, as they manage to avoid too much overlap. Niessen and Chopin discuss the earliest roots and impulses for the Race Directive, starting from an initiative by a group of NGOs called ‘the starting line’.
tracing the slow development of the coming closer of the respective state approaches and reactions of EC institutions on the one hand and the ‘starting line’ on the other hand, this chapter offers an interesting additional historical perspective, not only about the Race Directive, but also of the background to the inclusion of Article 13 TEC by the Treaty of Amsterdam. It should be highlighted that the new starting line, in follow up of Article 13 TEC, was very similar to existing community legislation against gender discrimination, which seems to ‘forecast’ the specific focus of chapter 3.

While the legislative proposal of the Commission diverged in some respects of the new starting line, the NGOs chose not to pressure the Commission further but rather put the Member States under pressure to accept the Commission’s proposal. Arguably this position considerably contributed to the swift adoption by the Council of the Race Directive.

Tyson provides an elaborate discussion and analysis of something, which is briefly touched upon in the previous chapter, namely the legislative process at the level of EC institutions themselves. Actually this chapter mainly examines the positions taken by the Member States on an article by article basis, each time explaining the eventual outcome. Hence Tyson’s contribution provides valuable information about the sensitivities on the sides of Member States, which explain the precise wording of the Race Directive. It will be interesting to follow up how the ECJ’s interpretation might diverge from the intended meaning by the drafters. Particularly illuminating is the discussion of the formulation in Article 2 of the Directive on the definition of indirect discrimination, more specifically the aspect, which influences the burden of proof. Even though it is not feasible to give an adequate account of the various issues addressed by Tyson, it might nevertheless be interesting to present a selection of contentious matters. Tyson’s account covers, *inter alia*, the actual definition of harassment, the degree to which the Directive would cover governance of private relationships, the exceptions to the prohibition of direct discrimination on the basis of race, the sharing of the burden of proof, and the independence of the national specialized bodies. It should in any event be highlighted that the Member States were well aware of the fact that there could be an overlap between (direct discrimination on the basis of) nationality and (indirect discrimination on the basis of) race, hence making it problematic that the former is excluded from the scope of the Directive. Also here the jurisprudence of the ECJ will be revealing.

Notwithstanding the outstanding quality of Tyson’s contribution and the additional insights he provides to the readers, his conclusion does not flow logically from his exposé and seems rather a conclusion of the previous chapter.

Parmar’s contribution may be rather speculative as it sets out to predict to what extent the ECJ’s jurisprudence in terms of racial discrimination will mirror its older and highly developed jurisprudence in terms of gender discrimination. Arguably this is everything but a futile exercise in view of the legitimate premise that the ECJ is the key institutional actor in developing the principle of equality.

The author acknowledges the specific features of the Race Directive which have entailed that the protection afforded to racial or ethnic origin is elevated above the
other grounds of discrimination. He nevertheless goes on to argue that there are several reasons why the gender equality jurisprudence is relevant for the development of racial equality law. Firstly, the formulation of the Race Directive ostensibly derives from the sex equality field. Secondly, the legislative history of the Race Directive and the subsequent adoption of the new Equal Treatment Directive (gender) arguably reveal a reflexive cross-fertilization process between both bodies of law. Finally, the familiarity of the EU officials with the gender equality field entails that it is ‘highly probable that the measures used to address sex discrimination in the past will be treated as models in relation to other new protected statuses under Article 13 TEC’, like race. Consequently, he forecasts certain judicial choices in interpreting the Race Directive on the basis of judicial decisions from the gender equality field. Issues focused on include the scope of the concept race and ethnic origin, the exceptions to the prohibition of direct discrimination on the basis of race, the protection against victimization and the reversal of the burden of proof. While welcoming this cross-fertilization process between the EU’s different anti-discrimination measures, the author correctly points out that the ECJ also should look to alternative points of reference outside its own jurisprudence, particularly in view of the innovative features of the Race Directive.

Per Johansson’s chapter on the national implementation process (and problems) provides an important additional dimension to the part on EU standards on non-discrimination. However, this chapter is not really innovative and openly relies on (and provides a condensed overview of) two reports on national implementation of the Race Directive compiled by NGOs. The author actually wrote one of the reports and hence seems to recycle his own work in a more condensed format. Since the goal of the book is to take stock of the most recent developments, it does not purport to be innovative. Still, one wonders why no efforts were made to update the information of the reports as the edited volume is published one to two years after the reports, while several countries have finalized their implementation legislation since then.

In general, the chapter provides for each question a general rule as well as an overview of the most striking exceptions, but the question about the possible gap between national legislation and its implementation is covered country by country. As the latter is restricted to certain specific problems and does not follow a certain template, it makes it difficult to adequately compare. Furthermore, one can question the value of extremely condensed overviews as the overall picture does not come across. A similar point can be made in relation to several other sections of this contribution.

It should also be remarked that sometimes the chapter contains very vague evaluations, providing no further insights. Sometimes the discussion of a certain topic actually gives the impression that the author has missed the point. For example, if most countries indeed prohibit discrimination on the basis of nationality (in similar terms as on the basis of race), why was it then excluded from the Directive?

Finally, it is regrettable that the editors did not ensure an overarching, general conclusion at the end (maybe in stead of the very short summaries at the end of the discussion of various questions?), which would have avoided an abrupt stop. As this is the last chapter of Part II, it leaves the reader with a slightly uncomfortable feeling.
Part III consists of two chapters, one with an excellent comparison of the approaches of the EU and the Council of Europe and one which (again) looks at the implementation of equality law at the national level.

Mark Bell’s contribution nicely ties together the analysis in the preceding chapters, arguably explaining the lack of a ‘proper’ conclusion at the end of Part I, II (and III). A succinct description of the main activities of both organizations aimed at combating racism and racial discrimination is followed by a thorough and most enlightening comparison of the stances and approaches adopted by each, underscoring the similarities and differences. On the side of the Council of Europe the ECRI Recommendation receives most attention, since it constitutes a document of similar detail as the Race Directive.

The issues Bell addresses include the relation between race, religion and nationality as prohibited grounds of discrimination, the respective attitudes towards direct and indirect discrimination, the material scope of the prohibition of discrimination and the role for different branches of law and the importance of aiming at effective enforcement. In these respects, Bell observes a reasonable degree of consensus between the Race Directive and the ECRI’s model legislation. He goes on to point out though that the instruments depart in regard to measures that go beyond mere negative prohibitions of discrimination and touch on questions of affirmative action, contract compliance and positive duties for public authorities to promote equality and prevent discrimination the exercise of their functions. In relation to these matters, the ECRI Recommendation clearly adopts a stronger, more pro-active position, while EU law remains clouded in ambiguity. In his conclusions, Bell, in a excellent manner, contrasts the more cautious approach of the EU Directive and the ECRI model legislation which goes significantly further, while acknowledging the fundamental difference of the legal nature of these instruments. Interestingly, the EU’s shift towards the ‘open method of coordination’ actually comes close to ECRI’s working methods of persuasion and political pressure. At the same time, ECRI’s work expected to be facilitated because of many of its recommendations are simultaneously obligations under the Race Directive. Nevertheless, there are currently areas of considerable divergence, which require remediation. Here, an update of the chapter taking into account the latest developments in terms of the constitution of the EU would be welcome.

Notwithstanding the title of Ann Dummett’s contribution ‘implementing European anti-discrimination law’ it really focuses on the implementation of the EU’s Race Directive. Even though it relies on the same reports as Per Johansson, this chapter is not structured around the questions of these reports but around different themes. Nevertheless, the question remains why this chapter is put in Part III and not in Part II, immediately following Per Johansson’s chapter.

Dummett fully acknowledges the reliance on the two NGO reports but appropriately urges caution because these reports are not updated. It would have indeed been commendable if an attempt had been made to obtain more updated information about national implementation. A bonus of Dummett’s contribution is that she provides factual
information about states which is helpful to interpret the legal framework adopted. She also duly warns about gaps between legislation and actual implementation. Several of the themes she selected for analysis are most appropriate and provide important additional information and/or highlight relevant perspectives, more specifically concerning the Roma, anti-Semitism, immigration, institutional differences and political backgrounds.

Several critical remarks can nevertheless be made. It is, for example, not clear on what basis the author selects one or two countries for each theme as no further explanation or justification is given. Furthermore, her analysis often stops at a very superficial level, leaving the impression that she merely scratches the surface.

Dummett’s assessment of the immigration theme is rather striking in its ‘ferocity’: she seems to think that having an immigrant status at all would inherently amount to unfair discrimination. Notwithstanding the clear concern for the appropriate treatment of immigrants throughout this chapter, there is not even a cursory reference to the adoption in November 2003 of a Directive on the Status of Long Term Resident Third Country Nationals. Another example of lack of appropriate supervision and guidance by the editors?

Finally, it should be pointed out that while Dummett’s contribution also lacks a ‘proper’ conclusion, she raises some interesting ‘main points to watch’ in the final section on ‘effective compliance’, providing a basis for future work.

Conclusion

Despite the critical tone of this book review, it should be stressed that this edited volume springs from a most commendable initiative and provides a useful compilation of information. However, the entire text does not live up to the promise of its title, in part because some chapters are not focused on racial discrimination, further because the overall structure is not balanced and, finally, because several chapters were not adequately updated. Mark Bell’s chapter succinctly pulls together the various strands developed in parts I and II, but could also benefit from a solid update.

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A painful and violent armed conflict through which the dissolution of Yugoslavia took place marked the end of the 20th century in European history. As it proved once again, in the absence of an agreement between the parties involved, dismemberment or
dissolution of the existing states and the emergence of new ones is a highly emotional process followed by disruption of normal life and enormous human suffering. Current international law provides a relatively vague framework within which the international community can deal with the claims for independence and statehood. This framework has two main pillars: the right of self-determination granting, *inter alia*, the possibility of creating one people’s own state and the principle of *uti possidetis* applied in determination of boundaries of a newly created state and used to pose a sort of geopolitical limit to the self-determination claims.

The book written by Petar Radan analyses the concepts of self-determination, secession and *uti possidetis* as they are established in international law and understood and implemented in practice. Its principal purpose is to examine, from the perspective of international law and in the context of the break-up of Yugoslavia ‘the legality and wisdom of the international community’s response to the break-up of that state as to the question of the borders and territorial extent of the new states that emerged as the result of secession’ (p. 6). As pointed out in the foreword, the book covers in detail several key issues such as: the meaning of ‘people’, the *uti possidetis* principle, Yugoslavia’s constitutional and legal history, Yugoslavia’s secessions and the Opinions of the Arbitration Commission (known as the Badinter Commission) which was instituted in August 1991 by the European Community to deal with some legal issues of crucial importance for the existence of the Yugoslav Federation. The book contains six main chapters preceded with an introduction and followed up by a conclusion. In addition an appendix is included with a list of cases and relevant documents. After dealing (in chapters 1 and 2) with the notions of ‘people’ and ‘nation’, the author proceeds with the discussion of the *uti possidetis* principle and its application in Latin America and in Asia and Africa (chapters 3 and 4). The case of Yugoslavia is discussed in chapters 5-7, divided into three main themes: the national question and international administrative borders in Yugoslavia, 1918-1991; the international response to and course of the Yugoslav secessions; and, the manner in which the Badinter Commission dealt with the issue of secession, self-determination and *uti possidetis* principle.

Notwithstanding the fact that the book was published a decade after the disappearance of the Yugoslav Federation, the author obviously discusses not only actual but also a very important topic. Being of significance for peace and security, the issues of self-determination, secession and boundaries remain continuously within the scope of attention in both political debate and in various disciplines of scientific research. Yugoslavia presents in many respects a unique case. As stated in the 1974 SFRY Constitution (Introductory Part, Basic Principles, I), the Yugoslav Federation was formed on the basis of the exercise of the peoples’ right of self-determination including the right to secession. The post-WW II Yugoslavia served as an example of a successfully solved national issue which seemed to have satisfied the needs of all various peoples and nationalities living there. During the period of relatively rapid deterioration of economic and social situation which had taken place after Tito’s death, the right of self-determination was invoked as a basis for separation from the country and creation of independent states.
By meeting these claims the international community confirmed that self-determination presents, indeed, a continuing right which is not exhausted by one-time exercise, like Serbia insisted that to be the rule.

In each case of a self-determination claim aimed at the creation of an independent state, the international community is faced with two important questions: firstly, does the self-determination unit qualify for independent statehood and secondly, if so – within which borders the new state will be recognized. These two narrowly interrelated problems keep the attention of the author throughout the whole first part of the book.

The right to self-determination is clearly established by common Article 1 of the two Human Rights Covenants (on Civil and Political Rights and on Economic, Social and Cultural Rights). However, the absence of a definition of a ‘people’ in international law and of criteria according to which a group can be considered to be a ‘people’ for self-determination purposes, present major problems in the implementation of this right. It seems that Article 1 applies to three different categories of entities: (a) entire populations living in independent and sovereign states; (b) entire populations of territories that have yet to attain independence, and (c) populations living under foreign military occupation. Evidently, when dealing with self-determination claims the international community avoids defining a ‘people’ in terms of a ‘nation’, but as a territorial unit. As rightly pointed out by the author, the practice existing in the period of decolonization confirmed that a ‘people’ were understood as individuals belonging to a certain territory under colonial or foreign domination. Similar position was taken by the Badinter Arbitration Commission which believed that all the claims for independent statehood had to be determined in accordance with the territorial definition of a ‘people’. The author, however, strongly disagrees with such an understanding of a ‘people’ in essentially territorial terms and considers it to be an incorrect interpretation of the existing international norms. The application of the classic theory following the territorial definition of a ‘people’ is in his view a wrong approach in solving self-determination claims. More acceptable for the issue of self-determination would be the romantic theory which defines ‘people’ as national or cultural groups. Accordingly, a ‘nation’ is a group linked by a common history and culture and bound to a national ideal that the nation should be autonomous, united and distinct in its recognized homeland (p. 12). The author goes on by arguing that if a ‘people’ would not be understood to mean the population of specified types of political units but would be defined to include certain groups within a state, then – under certain circumstances – there would be a legal right to secession. Contrary to this, a territorial definition of a ‘people’ renders secession illegal and ‘flies in the face of the generally accepted view in international law that secession is neither legal nor illegal’ (pp. 4-5).

While one can clearly see the points the author is making with regard to both the definition of a ‘people’ as a ‘nation’ and the right of secession, there are some obvious difficulties in accepting them unreservedly. Though the common culture, language and history are important factors in mobilizing a group’s political forces and in articulating common claims, it seems that the inclusion of ‘a nation within the meaning of
a people’ does not really solve the problem of the definition of the self-determination unit. This is mainly due to the fact that like ‘people’ the very concept of a ‘nation’ has been subject to different interpretations too. Some authors claim that the definition of a ‘nation’ used in the theory of self-determination had been essentially political: in the period of American and the first period of French Revolutions self-determination had been a simple corollary of democracy and accordingly nationality meant the principle of democracy. In Central Europe, however, the idea of the culture nation acquired priority over the political conception of the nation. It regarded nationality as an objective rather than subjective fact and therefore national self-determination no longer implied an element of choice on the part of individuals but was decided at birth. ‘As the individual did not determine his nation but, rather the nation determined the individual, self-determination ceased to be self-determination at all and became “national determinism”’. Therefore, according to Alfred Cobban, practical difficulties may not have arisen from the principle of self-determination, but from national determinism ‘result of which has been that in political practice and in theory, in history as well as in logic, the principle of self-determination has been reduced to a denial of both national and demographic rights, and forced into a complete self-contradiction’. The complexity of the concept of ‘nation’ was also noted by historian Friedrich Meinecke, who in the early 20th century developed the concept of Kulturnation. He indicated not to one but to a variety of different forms in which this concept could take place such as: a culture-nation and a state nation; national state in the political sense and national state in the national-cultural sense; among the national states in the political sense and also among those that are both political and cultural nations; there is a distinction between the ancient and modern types and it should be always kept in mind that in historical reality these different forms merge into one another. A difference made between political and personal nation, or between territorial or civic and ethnic nation, can also be noted. This leads to the conclusion that – even if the existing international documents would be interpreted to imply that the right of self-determination belongs to a ‘people’ as a ‘nation’ – it would not be easy to identify a particular self-determination unit. Moreover, this understanding of the self-determination unit would even increase the possibility of fragmentation of states which the international community wants desperately to avoid.

The right to secession is also one of the questions which divide the opinions in the general discussion. In the existing body of international rules it has no explicit status and in international politics it is – for geopolitical and demographic reasons of power and prestige – seen as illegitimate and hazardous and is resisted by states and governments world-wide. Secession ‘is not simply the formation of a new political association among individuals … it is the taking of a part of the territory claimed by an existing state’. For the Badinter Arbitration Commission the disintegration of the Yugoslav Federation was result of the process of dissolution and not of secession as it has been strongly maintained by the author. As a proponent of the above-mentioned romantic theory he holds the view that the definition of a ‘people’ as a national and not a territorial unit provides the right to secession. This right includes also the possibility of
redrawing the boundaries and rejecting the principle of *uti possidetis* with which application in the case of Yugoslavia he clearly disagrees. Quite different from its original meaning in Roman law (where it meant ‘an interdict of the Preator which precluded the disturbance of the existing state of possession of immovable property’, p. 69), in international law it connotes a method of determining territorial changes. However, one of the essential prerequisites for its application to the disputed boundaries in the region of Latin America, Asia and Africa in the wake of gaining independence from colonial powers was the consent of the parties concerned. In addition, it applied only to boundary disputes between states acquiring independence from the same colonial power and not to disputes in which the disputant states gained independence from different powers, when the principle of state succession to international borders applied. In other words, a critical aspect for the implementation of *uti possidetis juris* is that it refers to a case of decolonization and that there is a mutual agreement between disputant states on its application in determination of their border. More precisely, *uti possidetis juris* can be applied in circumstances where the disputant parties agree that an existing colonial border should be transformed into an international border, but cannot agree on the location of the colonial border as at the date of independence. Both of these conditions were not fulfilled in the Yugoslav case: it was not a case of decolonization and not all of the parties to the conflict agreed with the application of this principle. Therefore the submission of *uti possidetis juris* could be justified neither on the basis that the fragmentation of the Yugoslav Federation amounted to a form of decolonization nor on the basis that there was an agreement between the Yugoslav republics that internal borders could in the future be transformed into international borders (p. 230). In the author’s view in cases of revolutionary transformation, such as occurred with the break-up of Yugoslavia the right of nations to self-determination should be recognized. In contested areas internationally recognized plebiscites should be organized and in some situations may even be necessary to facilitate orderly and voluntary transfers of parts of the population. For these reasons, the application of the so-called ‘Badinter Borders Principle’ of the Arbitration Commission which transformed the administrative borders of the former Yugoslav republics into international borders, was wrong as it failed to take into account that the internal, administrative, borders of the former Yugoslavia were always contentious and not widely supported by the Yugoslav people. Moreover, such an approach by the Commission did not have any positive impact on the peace process and the fighting between the parties involved continued with increased intensity. With regard to the question of boundaries the author further claims that secession from a federal state requires a more flexible approach of the international community. In some cases of rather homogenous population the international community might more easily recognize the independence within the administrative boundaries of a secessionist unit, like it was the case with Slovenia at the time of SFRY dissolution. However, in cases of heterogeneous population, the international community needs to consider the possibility of redrawing the boundaries. Otherwise, a mere automatic transformation of adminis-
trative, internal, boundaries into international would mean a creation of a new rule of international law.

This publication presents a valuable contribution to the continuing discussion on a number of complex international legal, political and theoretical problems which are of significance not only for the peoples concerned, but also for states and for the international community as a whole. This holds in spite of the fact that the outspoken views of the author might meet with certain criticism and opposition. In this sense one could think about the right of secession advocated by the author. Secession continues rather to be seen in a negative light because of its relation to irredentism which is considered one of the most dangerous forms of nationalism. ‘[I]t unremittingly identifies nation and state … [and] conceives the nation as an organic, homogenous whole, all members of which are supposed to dwell under a common political roof and to bow to a single authority’.8 By attempting to aggrandize existing states irredentism can create immense international instability and its central role has been noted not only in the explosion of two world wars and endless conflicts, including the two Gulf wars, but also in the disintegration of Yugoslavia.9

On the other hand, it is a matter of fact that on the international level the concepts involved in the topic of research are so vaguely formulated level that it leaves the possibility for many different interpretations and views. The author has succeeded in providing solid arguments to support his views. The book reflects indeed a thorough and broad prior research which has been done for this publication. For all this the author deserves sincere compliments.

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4. Idem, at p. 54.
5. Idem, at p. 49.
8. Conversi, op.cit. n. 6, at p. 11.4.
9. Ibid.
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Ever since the 1972 Stockholm Conference on the Human Environment introduced a set of international law principles to conserve the environment and to foster a rational use of natural resources, a host of multilateral and regional treaties has been concluded to elaborate upon these principles in specific areas of concern. A relatively early as well as successful example is the treaty regime for the protection of the ozone layer. It addresses the depletion of the crucial ozone layer of the Earth which is caused by the anthropogenic emission of especially chlorofluorocarbons (CFCs), in the past widely used in refrigerators, air conditioners and other CFC-related products.

This regime is based on the 1985 Vienna Convention on the Protection of the Ozone Layer and the 1987 Montreal Protocol. Both instruments have enjoyed widespread ratification records and could enter into force relatively quickly (in 1988 and 1989, respectively) despite their far-reaching consequences for industrial production and consumer markets. The Montreal Protocol has been amended regularly to adjust to new findings and new realities.

This book has a somewhat heavy structure with as many as five parts for a mere seven chapters. Nevertheless, it is organised in a clear and logical way. Part I (chapter I) focuses on the more general phenomenon of regimes as identified in international relations studies as ‘international institutions for the governance of limited issue-areas’ (p. 10). However, such regimes also can relate to general interest areas, such as international trade (the GATT/WTO regime), peace and security (the UN Charter regime) or human rights (the UN machinery in this field). The author emphasises the distinctive, own character of the ozone regime and labels it as a so-called self contained regime, which can stand and operate on its own. Part II engages in an in-depth review and legal analysis of the ozone layer protection treaties. Its chapter II addresses the 1985 Convention and highlights its contribution to the evolution of contemporary international law, especially through the precautionary principle and the principle of the common concern of humankind. The latter is a somewhat emasculated version of the principle of the common heritage of humankind, which could take root in the international law of the sea and outer space law only. Chapter III has a lengthy and rather frightening title: ‘The Historical Evolution of the International Cooperative and Regulatory Régime for the Protection of the Stratospheric Ozone Layer: The Internationalisation of ODS Regulatory Measures and National Implementation and Enforcement of the Ozone Treaties’. Fortunately, in reality chapter III takes the reader in an organised way through the wood of conferences, reports and drafts that led to the Montreal Protocol and its four adjustments in Helsinki (1989), London (1990), Copenhagen (1992) and Vienna (1995). It also contains an interesting section, Part B, which reviews the national implementation and enforcement of the international ozone treaties in selected industrialized states (US, EC, Germany and Japan) and developing states (Brazil, Malaysia, Thailand). Part II
discusses the compatibility of the ozone regime with the GATT/WTO international trade law regime. Article 4 of the Montreal Protocol provides for trade restrictions against free riders, both non-complying State Parties and non-complying non-State Parties. The innovative compliance system of the Montreal Protocol is extensively reviewed in Part IV. Its chapter 5 addresses the functions and powers of the internal treaty institutions, while chapter 6 reviews the establishment and functioning of the Multilateral Fund as the financial mechanism of the Montreal Protocol and the rather unique international transfer of ozone-friendly technology. Lastly, Part V (chapter 7) provides some conclusions.

Notwithstanding the fact that the author qualifies it as a self-contained regime, important lessons can be learnt from the evolution and rather successful implementation of the ozone regime for the management of other areas of global concern. Firstly, the Ozone Layer Convention of 1985 was one of the first international institutional mechanisms to address a global environmental problem. Others were soon to ensue, such as the conventions with respect to climate change, biological diversity and anti-desertification, respectively. Second, it introduced in multilateral relations the formula of a ‘framework treaty’ to be followed up by and elaborated into specific protocols. The UN Framework Convention on Climate Change and the Convention on Biological Diversity (both concluded in 1992) followed this model, albeit so far with considerable less success as regards their Kyoto Protocol (1997) and the Cartagena Protocol (2000). Third, this framework/protocol-formula proved to create considerable flexibility, as is reflected in the frequent amendment of the Montreal Protocol. Fourth, its negotiation and regular adjustments built on a close interaction with scientists who painstakingly conducted evidence on the state of the ozone layer and provided scientific evidence to the negotiators. Fifth, the ozone regime is also a major innovative instrument in differentiating between the obligations of industrial and developing states (e.g., the grace period for Art. 5 developing countries) and as such a forerunner of the Kyoto Protocol in the field of carbon dioxide emission reduction. Sixth, the ozone treaty regime entails and practices a comprehensive compliance regime in a pioneering way. On the one hand, it allows for collective sanctions in the form of restrictions on foreign trade meant to have harmful effect on the economy of the free rider states. On the other, the regime also introduces positive measures aimed at inducing compliance such as financial and technological support to developing countries and grace periods delaying implementation. Last but not least, in recent years (from 2002) evidence began to emerge that the ozone regime appears to be effective in limiting the rate of degradation of the ozone layer and that the size of the hole in the ozone layer over the Antarctic might begin to decrease, following the reduction in the levels of ozone-depleting substances in the atmosphere. This is certainly encouraging. The book under review is no doubt one of the most detailed and solid studies on the international ozone regime and introduces the reader to its rather complex and often unique features, while taking him on an interesting general excursus through various branches of both international environmental and international economic law.

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