This work examines the contribution that international law may make to the resolution of cultural conflicts – political disputes between the members of different ethno-cultural groups – in democratic States. International law recognises that persons belonging to minorities have the right to enjoy their own culture and peoples have the right to self-determination, without detailing how these principles are to be put into effect. The emergence of democracy as a legal obligation of States permits the international community to concern itself with both the procedure and the substance of ‘democratic’ decisions concerning ethno-cultural groups. Democracy is not to be understood simply as majority rule. Cultural conflicts in democratic States must be resolved in a way that is either acceptable or defensible and defeasible to all citizens, including persons belonging to ethno-cultural minorities. Democracy, Minorities and International Law examines the implications of this recognition.

Steven Wheatley is Senior Lecturer in Human Rights Law and International Law at the University of Leeds.
Established in 1946, this series produces high quality scholarship in the fields of public and private international law and comparative law. Although these are distinct legal subdisciplines, developments since 1946 confirm their interrelation.

Comparative law is increasingly used as a tool in the making of law at national, regional and international levels. Private international law is now often affected by international conventions, and the issues faced by classical conflicts rules are frequently dealt with by substantive harmonisation of law under international auspices. Mixed international arbitrations, especially those involving state economic activity, raise mixed questions of public and private international law, while in many fields (such as the protection of human rights and democratic standards, investment guarantees and international criminal law) international and national systems interact. National constitutional arrangements relating to ‘foreign affairs’, and to the implementation of international norms, are a focus of attention.

The Board welcomes works of a theoretical or interdisciplinary character, and those focusing on the new approaches to international or comparative law or conflicts of law. Studies of particular institutions or problems are equally welcome, as are translations of the best work published in other languages.

General Editors

James Crawford SC FBA
Whewell Professor of International Law, Faculty of Law, and Director, Lauterpacht Research Centre for International Law, University of Cambridge

John S. Bell FBA
Professor of Law, Faculty of Law, University of Cambridge

Editorial Board

Professor Hilary Charlesworth University of Adelaide
Professor Lori Damrosch Columbia University Law School
Professor John Dugard Universität Leiden
Professor Mary-Ann Glendon Harvard Law School
Professor Christopher Greenwood London School of Economics
Professor David Johnston University of Edinburgh
Professor Hein Kötz Max-Planck-Institut, Hamburg
Professor Donald McRae University of Ottawa
Professor Onuma Yasuaki University of Tokyo
Professor Reinhard Zimmermann Universität Regensburg

Advisory Committee

Professor D. W. Bowett QC
Judge Rosalyn Higgins QC
Professor J. A. Jolowicz QC
Professor Sir Elihu Lauterpacht CBE QC
Professor Kurt Lipstein
Judge Stephen Schwebel

A list of books in the series can be found at the end of this volume.
Democracy, Minorities and International Law

Steven Wheatley
University of Leeds
CAMBRIDGE UNIVERSITY PRESS
Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo

CAMBRIDGE UNIVERSITY PRESS
The Edinburgh Building, Cambridge, CB2 2RU, UK

Published in the United States of America by Cambridge University Press, New York

www.cambridge.org
Information on this title: www.cambridge.org/9780521848985

© Steven Wheatley 2005

This book is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2005

Printed in the United Kingdom at the University Press, Cambridge

A catalogue record for this book is available from the British Library

ISBN-10 0-521-84898-9 hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this book, and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.
for Katherine Louise
Contents

Acknowledgments xi
Table of cases xii
Table of treaties xvi
Table of UN resolutions and OSCE and other documents xix
List of abbreviations xxii

Introduction 1

1 The rights of minorities 7
   The League of Nations’ minorities regime 8
   The United Nations era 10
   The International Covenants 11
   Minorities 17
   ‘Persons belonging to minorities . . .’ 31
   The right to cultural security 34
   Positive measures 38
   The UN Declaration on Minorities 43
   The protection of national minorities in Europe 45
   Conclusion 62

2 The self-determination of peoples 64
   Decolonisation 66
   ‘Self-determination beyond colonialism’ 77
   Sovereign self-determination 85
   ‘Less-than-sovereign’ self-determination 106
   Indigenous peoples 109
   Conclusion 124
<table>
<thead>
<tr>
<th>3 Democracy</th>
<th>127</th>
</tr>
</thead>
<tbody>
<tr>
<td>Democracy in international law</td>
<td>128</td>
</tr>
<tr>
<td>The human right to democracy</td>
<td>135</td>
</tr>
<tr>
<td>Equal rights to political participation</td>
<td>137</td>
</tr>
<tr>
<td>Parliamentary representation</td>
<td>140</td>
</tr>
<tr>
<td>Participation in the conduct of public affairs</td>
<td>148</td>
</tr>
<tr>
<td>Minorities and political participation</td>
<td>150</td>
</tr>
<tr>
<td>The rights of political participation of national minorities in Europe</td>
<td>155</td>
</tr>
<tr>
<td>The limits of procedural inclusion</td>
<td>160</td>
</tr>
<tr>
<td>Consociational democracy</td>
<td>161</td>
</tr>
<tr>
<td>Integrating diversity</td>
<td>177</td>
</tr>
<tr>
<td>Democratic decision-making</td>
<td>184</td>
</tr>
<tr>
<td>Conclusion</td>
<td>189</td>
</tr>
</tbody>
</table>

Conclusion: the accommodation of diversity  191

Index  199
Acknowledgments

The author would like to thank the following who have commented on parts of the work: James Crawford, Colin Harvey, Dominic McGoldrick, Rachel Murray, Brian Thompson and Alexandra Xanthaki. The usual disclaimer applies. He would also like to thank the University of Liverpool Research Development Fund for its support in enabling the author to spend some time in 2002 at the Lauterpacht Research Centre for International Law, Cambridge University, where part of the research was undertaken. He would also like to thank the staff at the Centre for their hospitality. The author remains grateful to his parents, Michael Wheatley and Rosaleen Wheatley, and his immediate family, Katherine, Ben and Francesca, for their encouragement and forbearance during the writing of this book.
Table of cases

International Court of Justice


Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, International Court of Justice, Advisory Opinion 9 July 2004, 43 ILM (2004) 1009, 12, 19, 77, 79, 125

Western Sahara Case, ICJ Reports (1975), p. 12, 59 ILR 13, 72

Human Rights Committee


Altesor v. Uruguay, Communication No. 10/1977, UN Doc. CCPR/C/15/D/10/2 1977, 19 March 1982, 140


Länsman et al. v. Finland (No. 1), Communication No. 511/1992, UN Doc. CCPR/C/52/D/511/1992, 8 November 1994, 17, 30, 36–8, 150–1, 192
Länsman et al. (No. 3) v. Finland, Communication No. 1023/2001, UN Doc. CCPR/C/83/D/1023/2001, 15 April 2005, 37


TABLE OF CASES

Pietraroia v. Uruguay, Communication No. 44/1979, UN Doc. CCPR/C/12/D/44/1979, 9 April 1981, 150

African Commission on Human and Peoples’ Rights

**European Court of Human Rights**

Abdulaziz, Cabales and Balkandali (1985) A94, 192
Chapman v. UK, Reports of Judgments and Decisions 2001-I, 41, 192
Mathieu-Mohin and Clerfayt (1987) A113, 133, 143
Podkolzina v. Latvia, Reports of Judgments and Decisions 2002-II, 138
Refah Partisi (The Welfare Party) and others v. Turkey, Reports of Judgments and Decisions 2003-II, 176
Sidiroopoulos and others v. Greece, Reports of Judgments and Decisions 1998-IV, 59
Smith and Grady v. United Kingdom, Reports of Judgments and Decisions 1999-VI, 192
Socialist Party and others v. Turkey, Reports of Judgments and Decisions 1998-III, 139
Stankov and the United Macedonian Organisation Ilinden v. Bulgaria, Reports of Judgments and Decisions 2001-IX, 139
United Communist Party of Turkey and others v. Turkey, Reports of Judgments and Decisions 1998-I, 133, 139

**International Criminal Tribunal for Rwanda**


**United States**

Church of Lukumi Babalu Aye v. City of Hialeah, 508 US 520 (1993), 195
Employment Division, Oregon Department of Human Resources v. Smith, 494 US 872 (1990), 40

**Canada**

Reference re Provincial Electoral Boundaries (Saskatchewan) [1991] 2 SCR 158, 141, 145
Reference re Secession of Quebec [1998] 2 SCR 217, 81, 92, 95, 96, 185
Table of treaties

African Charter on Human and Peoples’ Rights (1981), 12, 21, 79, 82, 94, 133
African Charter on the Rights and Welfare of the Child (1990), 4
American Convention on Human Rights (1969), 12, 21, 25, 133
Charter of the United Nations (1945), 17, 66, 68, 91
  Preamble, 78
  Article 1(2), 68
  Article 1(3), 21
  Article 55, 21, 68
  Article 73, 69, 70, 73, 74
  Article 74, 74
  Article 75, 69
  Article 76, 69, 78
Constitutive Act of the African Union (2000), 132
Convention on the Participation of Foreigners in Public Life at Local Level (1992), 135
Convention on the Prevention and Punishment of the Crime of Genocide (1948), 7, 34
Convention on the Rights of the Child (1989), 4, 13, 15, 16
Covenant of the League of Nations (1919), 67, 68
  Convention for the Protection of Human Rights and Fundamental Freedoms (1950), 21, 47, 56
Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (1952), 12
European Charter for Regional or Minority Languages (1992), 26
<table>
<thead>
<tr>
<th>Treaty and Convention</th>
<th>Pages or Article Numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td>European Charter of Local Self-Government (1985)</td>
<td>108</td>
</tr>
<tr>
<td>European Convention for the Protection of Animals for Slaughter (1979)</td>
<td>5</td>
</tr>
<tr>
<td>Article 3</td>
<td>50</td>
</tr>
<tr>
<td>Article 4</td>
<td>56</td>
</tr>
<tr>
<td>Article 5</td>
<td>50, 56</td>
</tr>
<tr>
<td>Article 10</td>
<td>57</td>
</tr>
<tr>
<td>Article 11</td>
<td>59</td>
</tr>
<tr>
<td>Article 14</td>
<td>58</td>
</tr>
<tr>
<td>Article 15</td>
<td>59, 155–7</td>
</tr>
<tr>
<td>ILO Convention No. 107, Indigenous and Tribal Populations Convention (1957)</td>
<td>112, 112–14</td>
</tr>
<tr>
<td>Inter-American Democratic Charter (2001)</td>
<td>132</td>
</tr>
<tr>
<td>International Convention on the Elimination of All Forms of Racial Discrimination (1965)</td>
<td>94, 137, 167, 168</td>
</tr>
<tr>
<td>International Convention on the Elimination of All Forms of Racial Discrimination</td>
<td>20, 21</td>
</tr>
<tr>
<td>Article 1</td>
<td>79–80, 106, 120</td>
</tr>
<tr>
<td>Article 2</td>
<td>13, 15</td>
</tr>
<tr>
<td>Article 10</td>
<td>25</td>
</tr>
<tr>
<td>Article 13</td>
<td>25</td>
</tr>
<tr>
<td>Article 16</td>
<td>25</td>
</tr>
<tr>
<td>Article 18</td>
<td>12, 29</td>
</tr>
<tr>
<td>Article 19</td>
<td>13, 29, 149</td>
</tr>
<tr>
<td>Article 20</td>
<td>139</td>
</tr>
<tr>
<td>Article 25</td>
<td>76, 135, 145, 167</td>
</tr>
<tr>
<td>Article 26</td>
<td>39</td>
</tr>
<tr>
<td>Article 27</td>
<td>13, 14, 27, 28, 35, 46, 65, 150, 159</td>
</tr>
<tr>
<td>Article 40</td>
<td>84</td>
</tr>
<tr>
<td>Article 1</td>
<td>79, 106, 120</td>
</tr>
</tbody>
</table>
xviii  TABLE OF TREATIES

<table>
<thead>
<tr>
<th>Treaty</th>
<th>Article(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>International Covenant on Economic, Social and Cultural Rights (1966)</td>
<td>2, 11, 14</td>
</tr>
<tr>
<td>Montevideo Convention on the Rights and Duties of States (1933)</td>
<td>13</td>
</tr>
<tr>
<td>Optional Protocol to the International Covenant on Civil and Political</td>
<td>17, 31, 80, 133, 135, 150</td>
</tr>
<tr>
<td>Rights (1966)</td>
<td></td>
</tr>
<tr>
<td>Protocol Additional to the Geneva Conventions of 12 August 1949, and</td>
<td></td>
</tr>
<tr>
<td>relating to the Protection of Victims of International Armed Conflicts</td>
<td></td>
</tr>
<tr>
<td>(Protocol I) (1977)</td>
<td>94</td>
</tr>
<tr>
<td>Treaty of Peace with Poland (1919)</td>
<td>9–10, 45, 106</td>
</tr>
<tr>
<td>Treaty on European Union (1997)</td>
<td>132</td>
</tr>
<tr>
<td>UNESCO Convention against Discrimination in Education (1960)</td>
<td>12</td>
</tr>
<tr>
<td>UNESCO Convention for the Safeguarding of the Intangible Cultural</td>
<td>3, 13</td>
</tr>
<tr>
<td>Heritage (2003)</td>
<td></td>
</tr>
<tr>
<td>Vienna Convention on Succession of States in Respect of Treaties (1978)</td>
<td>103</td>
</tr>
<tr>
<td>Vienna Declaration and Programme of Action, 4, 94, 128, 133</td>
<td></td>
</tr>
</tbody>
</table>
Table of UN resolutions and OSCE and other documents

**General Assembly resolutions**


GA Res. 217 (III) C, adopted 10 December 1948, ‘Fate of Minorities’, 11

GA Res. 260 A (III), adopted 9 December 1948, 7

GA Res. 1514 (XV), adopted 14 December 1960, ‘Declaration on the Granting of Independence to Colonial Countries and Peoples’, 70, 73, 93, 94

GA Res. 1541 (XV), adopted 15 December 1960, ‘Principles Which Should Guide Members in Determining Whether or Not an Obligation Exists to Transmit the Information Called for under Article 73e of the Charter’, 69, 72, 73, 78


GA Res. 1760 (XVII), adopted 31 October 1962, ‘Question of Southern Rhodesia’, 73


GA Res. 2012 (XX), adopted 12 October 1965, ‘Question of Southern Rhodesia’, 74


GA Res. 2625 (XXV), adopted October 24, 1970, ‘Declaration on Principles of International Law Concerning Friendly Relations and
Co-operation among States in Accordance with the Charter of the United Nations’, 71, 92, 133, 142
GA Res. 2793 (XXVI), adopted 7 December 1971, ‘Questions Considered by the Security Council at its 1606th, 1607th, and 1608th Meetings on 4, 5 and 6 December 1971’, 98
GA Res. 34/22, adopted 14 November 1979, ‘The Situation in Kampuchea’, 78
GA Res. 36/55, adopted 25 November 1981, ‘Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief’, 12, 13, 28
GA Res. 55/2, adopted 8 September 2000, ‘Millennium Declaration’, 1, 186
GA Res. 55/82, adopted 26 February 2001, ‘Measures to be Taken Against Racial Discrimination or Ethnic Exclusiveness and Xenophobia, Including, in Particular, Neo-Nazism’, 78, 134
Security Council resolutions
SC Res. 183 (1963), 70
SC Res. 217 (1965), 72
SC Res. 554 (1984), 96
SC Res. 556 (1984), 135
SC Res. 581 (1986), 95
SC Res. 777 (1992), 101
SC Res. 828 (1993), 87
SC Res. 1244 (1999), 95
SC Res. 1545 (2004), 180

OSCE documents
Budapest Summit Declaration on Genuine Partnership in a New Era (1994), 46
Charter for European Security (1999), 60, 62
Charter of Paris for a New Europe (1990), 132
Conference on Security and Co-operation in Europe, (Helsinki) Final Act (1975), 60, 78, 79, 133
Declaration and Decisions from Helsinki Summit (1992), 60, 158
Document of the Copenhagen Meeting of the Conference on the Human Dimension (1990), 5, 46, 61, 61–2, 129, 157
Document of the Moscow Meeting of the Conference on the Human Dimension (1991), 132
Report of the CSCE Meeting of Experts on National Minorities (1991), 61, 62

Other documents
Draft Declaration on the Rights of Indigenous People, 5, 121–3
Article 3, 123
## Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>CEDAW</td>
<td>Committee on the Elimination of Discrimination against Women</td>
</tr>
<tr>
<td>CSCE</td>
<td>Conference on Security and Co-operation in Europe</td>
</tr>
<tr>
<td>EC</td>
<td>European Community</td>
</tr>
<tr>
<td>GA</td>
<td>General Assembly</td>
</tr>
<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
</tr>
<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
</tr>
<tr>
<td>OSCE</td>
<td>Organization for Security and Co-operation in Europe</td>
</tr>
<tr>
<td>SC</td>
<td>Security Council</td>
</tr>
<tr>
<td>SFRY</td>
<td>Socialist Federal Republic of Yugoslavia</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNESCO</td>
<td>United Nations Educational, Scientific and Cultural Organization</td>
</tr>
<tr>
<td>US</td>
<td>United States</td>
</tr>
</tbody>
</table>