## Contents

List of Abbreviations List of Contributors		xi xiii
1. Introduction Marko Milanović and Michael Wood		1
I. THE ADVISORY PROCEEDINGS IN	CONTEXT	
2. Explaining Serbia's Decision to Go to the ICJ		9
James Ker-Lindsay		9
<ol> <li>Introduction</li> <li>The Declaration of Independence and Serbia's Response</li> </ol>	nse	9
3. The Decision to Question Recognition or Secession		13
4. International Opposition to the Case		14
5. The UN General Assembly Resolution		16
6. Conclusion		18
To the second se		21
3. Arguing the Kosovo Case		21
Marko Milanović		21
1. Introduction		22
2. The Pleadings in Brief		24
3. Outline of Arguments		27
4. Jurisdiction, Propriety, and the 'Question Question'		32
5. Arguments under General International Law		44
6. Arguments under Resolution 1244		58
7. Conclusion		70
4. The Practicalities of Representing a Client in Comple	ex Multiparty	
Proceedings: The Example of Kosovo		60
Qudsi Rasheed and Michael Wood		
1. The Lead-Up to the Request		60
2. Practical Arrangements for Handling the Case		65
3. Kosovo's Participation in the Proceedings		67
4. Exchanges Among Like-Minded States		68
5. Conclusion		72
5. The Settling of a Self-Determination Conflict? Kosov	vo's	
Status Process and the 2010 Advisory Opinion of the	e ICJ	73
Bernhard Knoll-Tudor		
1. Introduction		73
2. Statehood or Stasis? UNOSEK and the Contact G	roup	74
3. Miscalculations and Flawed Premises	•	78

## Contents

4. Challenges to Serbia's Position	
	36
CTDIOCEIV's Cattlement Proposal	37
	90
8. The ICJ's Advisory Opinion	92
9. Conclusion	12
), Concrasion	
II. THE OPINION	
6. Questions of Jurisdiction and the Discretion to Decline a	99
Request for an Advisory Opinion	77
Vladimir Djerić	99
	00
	104
	116
4 Conclusion	
	118
7. The Question Question	110
	118
December the scope of the Question	119 124
	124
3. The Court's 'Corrections' to the Tormanders' 4. The Court's 'Interpretation' of the Meaning of the Question	132
5. Concluding Remarks	132
J. ICI Advisory Oninion on Kosovo:	/
8. Reflections on the ICJ Advisory Opinion on Kosovo: Interpreting Security Council Resolution 1244 (1999)	134
Interpreting Security Council Resorts	10/
Sean Murphy	134
Introduction     Core Legal Arguments Concerning the Consistency of	126
1 D 1 tion of independent with reconstruction	136
	156
3. Broader Ramifications of the Advisory Spanish and Application of Security Coucil Resolutions	165
4. Conclusion	
General and the Advisory Opinion	167
9. The UN Secretary-General and the Advisory Opinion	1 (7
Mathias Forteau	167
1. Introduction	169
<ul><li>2. Not a Mere Secretariat</li><li>3. Neutrality as a Solution</li></ul>	178
3. Neutranty as a condition	
10. The Sounds of Silence: Making Sense of the Supposed	187
Gaps in the Kosovo Opinion	
Marc Weller	187
<ol> <li>Introduction</li> <li>Is there a Prohibition of Unilateral Secession in International Law?</li> </ol>	190
2. Is there a Prohibition of Officeral Seconds	

Contents	ix
3. Is it Necessary to Rely on a Positive Right to Self-determination?	196
<ul> <li>4. Is there a Right to Self-determination in the Sense of Secession Outside the Colonial Context?</li> <li>5. The Definition of the 'People'</li> <li>6. Recognition of the People as Actors</li> <li>7. Was there a Particular Prohibition of Secession Imposed by the Security Council?</li> <li>8. The Negotiating Process as a Source of Legitimacy?</li> <li>9. What are the Implications of the Use of Force by NATO that Preceded the Eventual Declaration of Independence?</li> </ul>	199 205 207 209 211 212 214
10. Conclusion  III. REACTIONS AND IMPLICATIONS	
11. The Court and its Multiple Constituencies: Three Perspectives on the <i>Kosovo</i> Advisory Opinion	219
André Nollkaemper  1. Introduction 2. An Institutional Perspective 3. A Dispute Settlement Perspective 4. A Guardian Perspective 5. Assessment	219 222 229 232 238
12. The Political Aftermath of the ICJ's Kosovo Opinion	240
<ul> <li>Tatjana Papić</li> <li>1. Introduction</li> <li>2. Reactions to the Kosovo Advisory Opinion</li> <li>3. UNGA Resolution on the Kosovo AO</li> </ul>	240 241 247
4. Relations between Belgrade and Pristina—EU Sponsored Dialogue 5. Conclusion	254 265
13. Kosovo—The Questions Not Asked: Self-Determination, Secession, and Recognition	268
Alain Pellet  1. Pointless Question, Semi-Answer  2. The Right to Self-Determination of Non-Colonial Peoples	268 271 273

3. The Right to Secession v. Territorial Integrity

14. Kosovo and the Criteria for Statehood in International Law

2. Application of the Criteria for Statehood to Kosovo

4. Recognition by Other States

1. The Questions Avoided

James Crawford

3. Conclusion

273

277

280

280

281

290

15. Has the Advisory Opinion's Finding that Kosovo's Declaration of	
Independence was not Contrary to International 22.	291
Set an Unfortunate Precedent?	
Anne Peters	291
1. Introduction	
<ol> <li>Introduction</li> <li>Conceptual Issues: 'Uniqueness', 'Sui Generis', 'Precedent', and</li> </ol>	293
Distinguishing	295
3. The Advisory Opinion as a Precedent?	300
4. The DoI as a Precedent?	
5. Possible Effects of 'No Precedent' Talk on the Evolution	305
of International Customary Law	309
6. Normative Drawbacks of the 'No Precedent' Language	311
7. Conclusions	
IV. THE ROAD AHEAD	
16. Some Implications of the Advisory Opinion for Resolution	317
of the Serbia-Kosovo Conflict	
Richard Caplan and Stefan Wolff	317
1 Introduction	318
2. Advisory Opinions and Conflict Resolution	320
3. Further Recognition of Kosovo and its Effects	322
4. Expanded International Engagement	327
5. Shifts in Domestic Opinion, Politics, and Policy	328
<ul><li>5. Shifts in Domestic Opinion, Fontee, and</li><li>6. Growing Participation of Kosovo in the Society of States</li></ul>	330
7. Conclusion	
17. Old Problems, Fresh Frameworks: Kosovo, Serbia and the	
EU—the Virtue of a 'Free Territory'	332
	222
James Gow 1. Introduction	332
2. The ICJ	333
3. The Options for Kosovo	335
4. An EU 'Free Territory'	342 348
5. Conclusion	340
	250
18. Reflections on the Law and Politics of the Kosovo Case	350
Harold Hongju Koh	351
1. The Kosovo Case	356
2. The Kosovo Precedent	370
	363
Bibliography	367
Index	557