BOOK REVIEWS

Fragmentation and the International Relations of Micro-States: Self-Determination and Statehood by J.C. Duursma. Cambridge University Press, Cambridge, 1996, ISBN 0-521-56360-7, xxv and 461 pp., UK £55 /Dfl. 280.

In his report *An Agenda for Peace* of 1992, the then UN Secretary-General Boutros Boutros-Ghali stated, *inter alia*, that "if every ethnic, religious or linguistic group claimed statehood, there would be not limit to fragmentation, and peace, security and economic well-being for all would become ever more difficult to achieve".[1] The study under review, which is based on a Ph.D. dissertation defended at the University of Leiden, seeks to analyse more closely whether this assumption of dangers to international stability being inherent in the existence of (too many) 'micro-states' is justified. The author's principal question therefore is, "how do Micro-States (i.e., entities with exceptionally small territories and populations) function in the international community [...]?" (p. 3). Secondly, micro-states are regarded as borderline cases which can help to elucidate a number of international legal problems, especially with regard to the right to self-determination and the criteria for statehood: "[w]hat is a people with the right of self-determination? How small a people still has this right? Who is allowed to secede and under what circumstances? What is a State according to international law?" (p. 2).

The work is divided into two major parts. Part I, entitled *The general international legal context* (pp. 5-142), discusses in three chapters the right of self-determination, criteria for statehood, and the participation of micro-states in international organizations, particularly the League of Nations and the UN. The considerably longer second part presents *Five case studies of European Micro-States* (pp. 143-420), namely Liechtenstein, San Marino, Monaco, Andorra, and the Vatican City, and is followed by short *General conclusions* (pp. 421-433).

The first part thoroughly summarizes the results of the vast literature on self-determination, secession, and statehood in international law, and examines to what extent they are confirmed by state practice, especially

1. UN Doc. A/47/277, para. 17 (1992).

https://doi.org/10.1017/S0922156597210435 Published online by Cambridge University Press

state practice with regard to (the former) Yugoslavia. It is rightly concluded that the right to self-determination belongs to "all peoples" (p. 18), not just those under colonial, foreign, or alien domination, and that a 'people' entitled in such a way is, on the one hand, every population (or legally defined people) of an existing state, and, on the other hand, a "group of persons" objectively defined by ethnical, racial, linguistic, cultural, religious, traditional, or historical criteria, and willing to preserve the group's identity (p. 73). The international community has, however, not been able to agree on a precise definition of a people in that latter sense. The author holds that "the right of self-determination of the inhabitants of a State is the compilation of the right of self-determination of the different peoples living in the State's territory" (pp. 81-82), thereby regarding self-determination first of all as an entitlement of "natural entities". However, it seems doubtful whether the right to self-determination of a people of an existing state can be understood as derivative. It is rather an original right held by a body of people constituting a sovereign state. It follows from this recognition of two kinds of peoples as holding the right to self-determination that a claim for self-determination of a part of a population of a state usually involves a clash of two conflicting rights, something the author does not elaborate on.

A particularly interesting section of the first part is the one on secession (pp. 89-103). Emphasizing the inherent conflict of a "full right of self-determination" with the rule that the territorial integrity of an existing state is inviolable, the author concludes "that State practice has not established an *opinio juris sive necessitatis* under which a material justification for secession has been accepted in international law" (p. 96, see also p. 104). She doubts whether the principle set forth in General Assembly Resolution 2625 (XXV),[2] which permits dismemberment or impairment of the territorial integrity of a state in the absence of "a government representing the whole people belonging to the territory without distinction as to race, creed or colour", is a customary rule of international law. It therefore comes as a surprise when, only a few pages later, the author declares that "international State practice does accept a right of secession", and that "[s]ecession is inherent in the right of self-determination" (pp. 99-100). While it may be true that recent state practice has not unequivocally con-

2. Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance With the Charter of the United Nations, UN Doc. A/8028 (1970).

https://doi.org/10.1017/S0922156597210435 Published online by Cambridge University Press

firmed a prohibition of secession, it has nonetheless not produced consensus on a 'right of secession'. As to a possible *ius cogens* character of the right to self-determination, it is maintained that the right "is an absolute right from which one cannot derogate, as long as the territorial integrity of an existing State is not partially or totally disrupted by the exercise of this right" (p. 103). It seems peculiar to make the legal status of a right dependent on the way, or by whom, it is exercised. Ordinarily, one would first determine the content, or meaning, of a right, and then establish whether or not the so defined right is a peremptory norm of international law. If the author indeed considers a right of secession as included in the right to self-determination, the latter surely is not recognized as *ius cogens*. Or does the author want to say that, instead of different holders of the right, there are different rights to self-determination?

It becomes evident that recent state practice, in particular with regard to the dismemberment of (the former) Yugoslavia, has done little to clarify the old controversies surrounding the right to self-determination, and that the right is still far from being an instrument of international law which would facilitate a peaceful solution of claims of peoples for autonomy or independence. Dr Duursma's somewhat startling conclusion that "the present international legal situation encourages the use of force in order to make demands for secession successful" (pp. 102, 426) is true in so far as international law still does not provide for an impartial mechanism or institution which would examine and peacefully settle demands for autonomy (see p. 108). Given the fact that today an overwhelming majority of armed conflicts appears to be related to claims for self-determination, this is a troubling finding, pointing to a serious lacuna in an international legal order which proclaims as its first goal "to save succeeding generations from the scourge of war".[3] In view of the broad reading of the term 'international peace and security' by the Security Council in its more recent practice, it seems worthwhile to consider a more active role of that body (rather than the Human Rights Committee, see p. 107) in the peaceful settlement of claims for autonomy even before the conflict has turned violent.

Departing from her usual careful consideration of state practice, and also partly revoking her previous approval of an unqualified right of secession, the author then postulates a "right to gradual secession", which is

3. Preamble of the UN Charter.

https://doi.org/10.1017/S0922156597210435 Published online by Cambridge University Press

said to flow "from the already existing right to autonomy" (p. 106). Apparently, the latter is simply regarded as being included in the right to self-determination. Such *argumentum a maiore ad minus* does, however, not sufficiently determine the scope of a right to autonomy, and is even less capable of supporting a "right to gradual secession", even if such a step-by-step approach to independence is undoubtedly preferable to a sudden, and therefore often violent, separation.

This thought-provoking chapter on self-determination does, however, make little reference to the special situation of 'micro-peoples' whose demands for independence may result in micro-states. This is not astonishing because present international law, having been unable to bring forth an undisputed definition of a 'people' as holder of the right to self-determination (with the exception of peoples of existing states), does not give special weight to the size of a group claiming self-determination.

In contrast, the chapter on *Criteria for statehood* is more relevant to micro-states. Of the established criteria, territory and population do not pose difficulties, because in both respects international law does not require a certain minimum size - the Vatican City has a territory of 0.44 square kilometres, and Nauru has about five thousand nationals (p. 117). Crucial is the criterion of independence, and here the author carefully analyses what kind of situations and, particularly, contractual obligations may cast doubt on an entity's independence. "The heart of the problem with regard to the formal independence of a Micro-State is to what extent the internal and/or external policies of the Micro-State have to be brought in line with those of the neighbouring State" (p. 126).

The following chapter, which concludes Part I, recounts the stance adopted by the League of Nations and the UN on the question of membership of micro-states. Whereas the League rejected applications submitted by San Marino, Monaco, and Liechtenstein in 1919-1920 because "[i]t was considered undesirable to accord Micro-States the same right of veto or an equal value in voting procedures as larger States"[4] (p. 133), the UN, after a short period of reluctance and discussion of possible alternatives ('associate membership'), opened itself first to small decolonized territories and later also to European micro-states. Liechtenstein, San Marino, Monaco, and Andorra all obtained membership in the early nineties, together with the former UN trust territories Micronesia, the Marshall Islands, and Palau. It

4. *Cf.* League of Nations, Records of the Second Assembly, Plenary Meetings 685 (1921).

is remarkable that in none of these cases the Security Council saw fit to examine whether the conditions for membership set out in Article 4 of the Charter were met, although, as the author explains in detail, the independent status of Monaco, Andorra, and the Pacific Islands is not beyond doubt (p. 139). This seems to indicate that today, the 'principle of universality' of the United Nations is understood as encouraging the greatest possible participation of states in the organs of the international community.

The author holds that agreements which possibly require a state to align its voting practice with that of another state[5] would be debarred from being applied in the UN by virtue of Article 103 of the Charter, i.e. the prevailing obligation to respect the sovereign equality of other member states. "Member States would no longer be sovereignly equal if some of them were not to have the freedom to vote as they wished in all United Nations organs by virtue of a bilateral treaty. At least within the United Nations such treaties can have no legal effect as they are contrary to Article 2, paragraph 1 of the Charter" (p. 140). It needs to be emphasized that the second statement is only tenable with regard to treaties concluded by a state before its admission to the UN. In the case of Monaco, it can indeed be held that, with Monaco's joining the organization, France is under an obligation to respect the former's sovereign equality, and that this obligation prevails over any conflicting right the French Republic may have under the 1918 Treaty. However, the principle of sovereign equality does not prohibit a state from, or protect it against, renouncing its sovereignty. On the contrary, it is a right inherent in sovereignty to relinquish one's sovereign rights. Therefore, it cannot be maintained that by becoming a member of the UN, a state accepts an obligation to preserve its own sovereign status, and that this duty, due to Article 103 of the Charter, prevails over other obligations. Accordingly, if a member state renounces its freedom to vote in the UN, it can no longer be regarded as sovereign, and it is up to the Security Council and the General Assembly to take the appropriate steps. In this regard, the future attitude of Monaco is important, because the state could also tacitly renew its former obligations.

It is something different to hold that by virtue of an admission of a

5. *See, e.g.*, The Franco-Monégasque Treaty (1918), which obliges Monaco in Art. 1(2) to "exercer ses droits de souveraineté en parfaite conformité avec les intérêts politiques, militaires, et économiques de la France".

https://doi.org/10.1017/S0922156597210435 Published online by Cambridge University Press

state to the UN, and its simultaneous (constitutive) recognition as sovereign by the international community, a possible original lack of independence will be healed and former renunciations of sovereign rights become irrelevant (cf. pp. 112-14). Yet another argument for Monaco's right freely to vote in UN organs would be to say that France, having voted in favour of the principality's becoming a sovereign and equal member of the UN in both the Security Council and the General Assembly, is prevented from invoking the 1918 treaty provision with regard to voting in the organization (*venire contra factum proprium non valet*).

Part II of the study evaluates in detail the present legal status of five European micro-states, paying particular attention to the conduct of their foreign relations. The five chapters follow the same plan; they discuss a state's territory, population, and economy, its history, constitutional and legal order (including the human rights situation), and its relations with states and international organizations, and finally apply the criteria of statehood developed in Part I. Drawing from a wealth of published sources, information obtained from the governments in question and interviews with princes and statesmen, the author provides a highly informative and up-do-date comparative analysis of the five territories' statehood. The work will be welcomed by many English-speaking readers since most of the hitherto available literature on these states is written in French, Italian, and German, not to mention the legal sources. It appears that, leaving aside the possible effect of their UN membership, the independence of all of the five but Liechtenstein and the State of the Vatican City is rather precarious - although the author, who clearly has become a friend of micro-statehood in the course of her studies, tries hard to minimize the respective legal and 'actual' limitations of freedom in internal and external affairs (see, in particular, the remarks on Monaco).

The case studies, though conveying much useful information, can do little to clarify the problems of self-determination and secession discussed in the first part, simply because none of the five states knows any of these problems. Their statehood is well-established, unchallenged, and not regarded as a danger by any neighbour. At the same time, the stories of Liechtenstein, San Marino and the other three do not really answer the question "what is a state in contemporary international law?", for each case is a special case, and each state's recognition by the international community the result of many decisions and events over a long period of time. Somehow the world has gotten used to the existence of Liechtenstein and,

frankly, does not care too much about it. To shed new light on the intricate issues of self-determination and secession, and to answer the question what effects a considerably more fragmented community of states might have on the stability of the international (legal) system, the author would have had to choose quite different examples - such as the states and entities having emerged from the ashes of the former Yugoslavia, the Soviet Union, and Somalia; rather than Monaco, she would have had to treat the African wars of secession which the UN Secretary-General had in mind when speaking of the dangers of fragmentation. But then again, the states in question are not micro-states. "The potential strength of a Micro-State as a member of an international organization", the author writes at the end of her study, "lies in the use of its vote in favour of the development of international law, respect for human rights, the general development of the international community and the correct implementation of internal procedural rules" (p. 432). It may be that Liechtenstein etc. live up to this small-is-beautiful idea. But what about Nagorno Karabakh or North Cyprus?

This stimulating and well-written book enlightens the reader in many different ways. The problem is that it does not know whether it wants to be a study of self-determination and secession (fragmentation) or a handbook on European micro-states.

Bardo Fassbender[*]

East Timor and the International Community: Basic Documents by H. Kreiger (Ed.). Grotius Publications, Cambridge University Press, Cambridge, 1997, ISBN 8-0-521-58134-6, xviii and 494 pp., UK £65/Dfl. 247.

Following the publication of this collection on East Timor, the Cambridge International Documents Series now consists of ten volumes. Previous volumes have presented material concerning, amongst other legal issues, the crises in Kuwait, the former Yugoslavia, and Liberia. Each volume is an indispensable part of the library of any international law researcher and

---

* Lecturer, Institute of International & European Law, Humboldt University, Berlin, Germany.

teacher.

When I began researching the question of East Timor in 1990, primary source material was extremely difficult to access. Researchers in the area were obliged to rely on the kindness of friends in government for primary materials and the fine and impassioned writings of pioneers like Professor Roger Clark and Jose Ramos Horta in the academic field.[1] Now, we have the basic documents on East Timor collected together in this impressive volume by Heike Krieger who has eased considerably the burden on future scholars in the area.

Having said that, it would be incorrect to suggest that this volume will interest only those experts or would-be experts on East Timor. The tragedy of East Timor has become the site of legal disputes which must exercise the minds of all international lawyers. The central issue appears to be the content and scope of the East Timorese right to self-determination. Indeed, the existence of this right is not disputed by any of the immediate parties to the conflict - Indonesia, Australia, Portugal, and East Timor itself. However, this central issue was strangely peripheral in determining the outcome of the *East Timor* case[2] at the World Court, where matters of a more procedural but nonetheless fascinating nature proved decisive. The critical debates over the extent of the indispensable third parties doctrine, the effect of resolutions of bodies of the United Nations, and the matter of third party obligations towards those entities claiming self-determination are documented in a series of illuminating exchanges during the pleadings of the case (pp. 377-398).

The material is arranged on a thematic basis with each theme or area dealt with chronologically. This works well on the whole, though the reader is obliged to go back and forth among the material in order to assess, say, the events leading up to the invasion of East Timor by the Indonesian Armed Forces in 1975 and the various responses to that invasion by states and by the United Nations itself.

The collection begins with a tactful summary of the East Timor situation. At times, the concern to remain politically neutral seems excessively agnostic as when the author discusses well-documented evidence of human

1. See, e.g., R.S. Clark, The "Decolonization" of East Timor and the United Nations Norms on Self-Determination and Aggression, 7 Yale Journal of International Law (1980); and J. Ramos Horta, Funu: The Unfinished Saga of East Timor (1987).
2. East Timor (Portugal *v.* Australia). 1995 ICJ Rep. 90.

https://doi.org/10.1017/S0922156597210435 Published online by Cambridge University Press

rights abuses as if these were merely assertions (p. xx). Nonetheless, this introduction serves its function admirably. Chapter One provides a much-needed historical background to the dispute. The various boundary treaties and arbitral agreements concluded between the Netherlands and Portugal from 1859 to 1914 are made available in this Chapter (pp. 1-6). The arbitration hearings designed to settle the boundary disputes between the two colonial powers at The Hague in 1913[3] make for ironic reading in the light of the recent *East Timor* case at the World Court. Here, again, we can see two states in dispute over Timorese territory and land. In 1913, however, the colonial powers were more transparent in their disregard for the 'native' populations. The Portuguese delegate remarks at one point in the arbitration that it is not necessary "to allow oneself to be guided too much by humanitarian motives toward the people of the Island of Timor" (p. 11).

Chapter Two documents the still incomplete process of decolonization. It begins with a statement against interest by the Indonesian delegate to the First Committee in 1957[4] who issues the following rebuke: "Indonesia had no claims on any territories which had not been part of the former Netherlands East Indies. No one should suggest otherwise or advance dangerous theories in that respect" (p. 27). This is one of the many pearls found in this text which show the elastic rhetorical uses of international law principles. Elsewhere in Chapter Two, there are documents relating to the United Nations' position on self-determination generally (pp. 28-33), and the Portuguese territories in particular (pp. 34-36), as well as a series of statements by Portuguese, East Timorese, and Indonesian officials dating from the period of the forced integration of East Timor into Indonesia (pp. 37-43).

Chapters Three and Four concern UN responses to the Indonesian invasion and the subsequent human rights abuses in East Timor. Chapter Three contains some fascinating exchanges between Portuguese and Australian representatives during the Security Council debates in 1975. It is salutary to read of Australian confidence then that "the Indonesian elements will withdraw as soon as the fighting between political parties has ceased" (p. 77). The Portuguese representatives appear to have adopted a more cynical view of Indonesian motives describing the Indonesian position on self-determination as "curious [...] since it [Indonesia] believes that the reply

3. See J.B. Scott (Ed.), The Hague Court Reports, First Series 387 *et seq.* (1916).
4. See UN Doc. A/C.1/SR.912 (1957).

can be known before the question is even put" (p. 78). The Indonesian defence of its occupation of East Timor is perhaps best articulated in Ali Alatas's famous speech to the National Press Club in Washington in 1992, included here in Chapter Five (p. 278). In this speech, Alatas rounded on Indonesia's detractors and shifted attention to Portugal's colonial record. This, of course, was the strategy adopted during parts of the Australian submissions to the World Court in 1995.

The most useful chapter for me is Chapter Six, which incorporates the responses by third parties to the situation in Indonesia. Included here are a variety of Double Taxation Agreements concluded with Indonesia by a number of states (pp. 291-294) and resolutions passed by the European Union and some Western European Parliaments (pp. 302-308). The 1982 hearings on East Timor before the US Senate's Foreign Relations Committee[5] also make for illuminating reading. Three interests dominate the discussions. The first is the US trading relationship with Indonesia, the second is the question of religious persecution on East Timor, and the third is the US obsession with the Vietnam analogy (pp. 313-327). The way these three interests interact during the hearings provides us with an important glimpse into the American mind on East Timor.

Chapter Six also documents Australia's rather sorry stance over the last thirty years. The Australian position is typified by the then Australian Foreign Minister's opaque answer to a question on the meaning of self-determination, put to him during a press conference in Portugal in 1992. This is followed by a rather depressing exchange.

> Reporter: "I'm sorry I didn't understand your answer."
> Senator Evans: "Well, that's your problem not mine."

Here, the Foreign Minister summarizes the Australian policy on Timor more effectively in one sentence than in any number of convoluted foreign policy statements made before or since. The lawyers representing Australia in the *East Timor* case do a rather better job of explaining Australia's legal position. Chapter Eight contains the selected pleadings and the opinions of the Court itself. The pleadings represent a marvellous resource for academics and students in the area. The debate over matters such as the nature and effects of United Nations law, the *Monetary Gold* principles,[6] and the

5. *See* 82 Department of State Bulletin 29-31 (1982).
6. *See* Monetary Gold Removed From Rome in 1943 (Italy *v.* Albania), Judgment, 1954 ICJ

distinction between political and legal issues is conducted at a high level by various counsel in the case.[7]

One final paradox should perhaps be mentioned. For all the studious neutrality of the compilers of this collection, the very existence of a text entitled "East Timor and the International Community" defies the Indonesian position that this is an internal affair of the Indonesian state. East Timorese self-determination is a matter of international concern. This excellent collection confirms that fact.

Gerry Simpson[*]

International Criminal Law: Cases and Materials by J.J. Paust, M.C. Bassiouni, S.A. Williams, M. Scharf, J. Gurule & B. Zagaris (Eds.). Carolina Academic Press, Durham, 1996, ISBN 0-89089-894-4, 1438 pp., US$ 80/Dfl. 182.

The establishment by the United Nations of *ad hoc* international criminal tribunals for the former Yugoslavia and Rwanda,[1] as well as progress in negotiations on a permanent international criminal court, have provided an enormous stimulus to the field of international criminal law. As a result of these developments, scholars and students, as well as the newly formed cadre of practioners, have a notable interest in the subject and a need for access to the relevant material.

The collection of materials edited by Jordan J. Paust *et al.* is therefore a timely addition to the literature on this subject, defining itself, as it were, as "the first major coursebook" for students in an area "that is clearly part of the needed curriculum for the next century" (p. xi). While other works on international criminal law certainly existed, this collection is indeed an impressive compilation of materials relevant to the subject.

The scope of material covered is quite broad, beginning in Part One (Chapters 1 through 3) with the general nature and sources of international

---

Rep. 19.

7. For an analysis *see* I. Scobbie & C. Drew, Self-Determination Undetermined: The Case of East Timor, 9 LJIL 185-211 (1996).

* Academic Director (Graduate Studies), Australian National University, Canberra, Australia.

1. UN Doc. S/RES/808 (1993); UN Doc. S/25704 (1993), and UN Doc. S/RES/955 (1994).

criminal law, individual, state, and 'other' responsibilities, and state competences to enforce (jurisdiction) international criminal law. Part Two, addressing incorporation and enforcement, is comprised of Chapters 4 through 7. Chapter 4 focuses on the incorporation of, and the competence to enforce, international criminal law in the US and Canada, as well as the various fora available within these jurisdictions. Chapter 5 concerns obtaining persons abroad, including issues of extradition, rendition, luring, abductions, and other uses of force. Chapter 6 addresses "other aspects" of international cooperative enforcement, including, *inter alia*, cooperation by international organizations such as INTERPOL[2] and the Schengen Convention.[3] The last chapter in Part Two, Chapter 7, considering international prosecutorial efforts and tribunals, is the most interesting for those concerned with recent developments in this field, and briefly addresses issues of international criminal procedure.

In Part Three, attention is turned toward the substantive aspects of international criminal law, and material providing a detailed examination of various offences is offered. Included offences range from the traditional (offences against peace, war crimes, crimes against humanity, slavery, and piracy; pp. 861-1173 and 1229-1244) to those reflecting a more modern approach (terrorism, drug trafficking, and counterfeiting; pp. 1175-1228 and 1245-1292), as well as those crimes defined as 'transnational' (pp. 1293-1358), notably money laundering. Excluded from this list of offences are crimes committed against United Nations and associated personnel, contained in the latest version of the International Law Commission's (ILC) Draft Code of Crimes Against the Peace and Security of Mankind,[4] which is intended to define the crimes within the jurisdiction of a possible permanent international criminal court. Additionally, several of the included offences, such as slavery, piracy, terrorism, drug trafficking, and counterfeiting, are excluded from the ILC Draft Code.

Finally, Part Four concerns defences to claimed violations of international criminal law. This part is divided into two chapters, the first of

2. International Criminal Police Organization, established without the formality of a treaty, Vienna (1923).
3. Convention Applying the Schengen Agreement of June 1985 Between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany, and the French Republic, on the Gradual Abolition of Checks at Their Common Borders, reproduced *in* 1990 Tractatenblad 145.
4. Report of the International Law Commission, 48th Session, UN Doc. A/51/10 (1996).

which (Chapter 19) concerns viable defences and the second (Chapter 20) those defences which are considered unacceptable. Included in the former are defence of superior orders, duress, self-defence, and mistake of fact, while in the latter are propriety under domestic law, *tu quoque*, double jeopardy between different sovereigns, and official status or immunity.

As the description of the contents indicates, this volume is quite comprehensive, both with regard to the aspects of international criminal law covered as well as the amount and variety of materials included in relation to the selected aspects. It is an impressive collection of materials, including excerpts from military manuals, legal articles, newspaper reports, statutory provisions, and both municipal and international jurisprudence. The error, if any, is, with the notable exception of Part Four on defences, on the side of overinclusion and some sections, such as the section on early US cases and opinions on incorporation and competence, could be significantly shortened without harming the overall product. Additionally, what one notices is the repeated excerpts from, and citations to, previously published work of the editors, as well as textual discussions of their opinion on various matters. While several of the editors have been quite prolific in the subject covered by this volume and therefore reference to their material is natural, in other cases they refer to themselves or excerpt from their own material when others are (at the very least) equally qualified in the particular field. Relatedly, there does not seem to be any indication of the hierarchy of included materials, including for example, Professor Bassiouni's Draft International Criminal Code and Draft Statute for an International Criminal Tribunal[5] alongside excerpts from the ILC's Draft Code[6] and the Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY). For the unsuspecting student this could result in substantial confusion.

Despite these relatively minor concerns, the volume's comprehensiveness, in combination with its detailed index, is its greatest asset and it fills a substantial void in the literature to the benefit of students, scholars, and practioners. Unfortunately, it is this very comprehensiveness which is in jeopardy and, as the editors recognize, the volume will need to be updated because of jurisprudence emanating from the ICTY and the International

5. M. Cherif Bassiouni, A Draft International Criminal Code and Draft Statute for an International Criminal Tribunal (1987).
6. Report of the International Law Commission, 46th Session, UN Doc. A/49/10 (1994).

Criminal Tribunal for Rwanda (ICTR). As such, while a valuable addition to the literature and an excellent collection of materials, a timely second edition would be welcome.

Olivia Q. Swaak-Goldman[*]

The United Nations as a Dispute Settlement System: Improving Mechanisms for the Prevention and Resolution of Conflict by C. Peck. Kluwer Law International, The Hague/London/Boston, 1996, ISBN 90-411-0248-5, xii and 301 pp., US$ 117/Dfl. 175.

There seems to be growing interest in dispute settlement outside traditional legal frameworks. While certain legal regimes have existed for dispute settlement in national and international fora, increased attention is being given to different types of settlements or resolutions of conflicts. Legal instruments have been extended and modified, different forms of preventive diplomacy, conflict prevention, and peace building are being developed. Within the overall theme of prevention and resolution of conflicts, Connie Peck looks at the United Nations as a dispute settlement system linking the traditional legal frameworks with these new developments.

Before examining her overview, it is perhaps helpful to ask: what is a dispute? While this appears to be a rather elementary question, it is worth reflecting on different aspects of disputes before talking about some form or instrument for settlement. For, if there are linkages between traditional frameworks and new developments, it is necessary to establish the basis on which a settlement takes place. Traditionally, the legal sense of dispute had two constitutive elements and a third basis for resolution. First, a dispute should be focused on a specific object of contention clearly delimited in space. Second, the object of dispute should be the source of conflict between clearly defined actors. Third, the resolution of the dispute must be settled within a specific time.

The above preliminary remarks concerning the three elements of dispute and dispute settlement are meant to show that the traditional characteristics of dispute settlement have become diffuse. The movement from strictly legal forms of adjudication to current legal/political prevention or

---

[*] Legal Advisor, Iran-United States Claims Tribunal, The Hague, The Netherlands.

conflict resolution reflect a dilution of the specificity of both object and actors as well as time. The newer, more political notions of preventive diplomacy through the continuum of peace building move away from the limitations of subject, actors, and time. In this sense, to talk of a United Nations dispute settlement system is first to attempt to conceptualize the United Nations as a system and second to show the various aspects of its systemic responses to a wide variety of situations. By placing traditional dispute settlement and newer possibilities of conflict prevention and resolution within the single framework of the UN, Connie Peck implies some overarching institutional framework and conceptualization that can incorporate the traditional with the new.

The book begins with the historical observation that the United Nations has been unable to fulfil its role of maintaining peace and security. The end of the Cold War, it is argued, offered new possibilities, especially with the development of more sophisticated, academic understandings of dispute settlement in the last twenty years. The author's wish is to use the techniques of the new "science" (p. 8) of dispute settlement on the diplomacy practiced by and at the United Nations. In terms of our previous remarks, this book is an attempt to extend traditional functions and instruments of dispute settlement to the work of the United Nations in the current environment. The underlying theme of the book is that now that the Cold War is over, the original, liberal internationalist ideal of lasting peace and security can be realized through enlightened procedures in a host of areas. The end of the Cold War has allowed the linkage from mere dispute settlement to peace and security through conflict prevention and resolution within the overarching umbrella of the United Nations. That is, dispute settlement as a specific instrument before armed conflict has been conceptually extended to include conflictual situations below the traditional peace and security level.

As an example of the new possibilities offered by the end of the Cold War and increased sophistication in understanding conflict resolution, Dr Peck explores in Chapters 4 and 5 game-theory technique for intra-state conflicts. While it could be argued, and certainly has been, that game theory is applicable to inter-state conflicts, Peck discusses intra-state conflict with reference to recent writings on the nature of the nation-state[1] and the

1. *See, e.g.,* U. Ra-anan, *The Nation-State Fallacy*, *in* J. Montville (Ed.), Conflict and Peacemaking in Multiethnic Societies 5-20 (1990); and P. Wallensteen & M. Sollenberg,

importance of ethnicity' for different groups. The shift from inter state to intra-state parameters is highly problematic even given the abstraction of rational choice models, and while the overview presented is certainly concise, it does not do justice to the subtleties of the problem. It may be that 'ethnic' tensions are only strategies used by individuals to further their agenda, but that the real sources of the conflicts are outside the obvious group affiliation. Whatever the cause of domestic tension might be, it must be understood that while dispute settlement was clear in time and space, conflict prevention, resolution and peacebuilding within a country adds several dimensions to traditional notions, particularly in terms of its implications for the UN. The movement here is not just going within borders for an international organization, it is in the very nature of the problem and the actors involved. To say that there is a conflictual situation within a country is not to assume that dispute settlement techniques are applicable.

As an example of the lack of specificity, Peck discusses how peacebuilding can be accomplished by international organizations through a democratic model. The promotion of good governance is an accepted value, and the role of international organizations like the UN to promote good governance is also accepted without question. There is no mention of the power implications for those 'assisting' the transformation to or consolidation of good governance. Is it to no one's advantage to have 'democratic' states with open markets? Is the United Nations a truly neutral organization in this context, remembering that it was originally a term used to identify specific countries in a World War II alliance? Most strikingly, Peck maintains that there is a "blueprint for good governance" (p. 103). While it is certainly true that there are norms and conventions setting standards, this assumption belies debates about the universality of human rights and the different forms democratic participation or empowerment might take. To say that "the Bill of Human Rights is basically a *prescription* for democratic government"[3] (p. 103) is to accept the aspirations of the Kantian liberal legacy with little reflection. While academics debate whether or not democracies do go to war with each other, and its domestic corollary of democracy equals development, liberal internationalists seek to impose

---

After the Cold War: Emerging Patterns of Armed Conflict 1989-94, 32 Journal of Peace Research 345-360 (1995).

2. *See, e.g.*, T.R. Gurr, Minorities at Risk: A Global View of Ethnopolitical Conflicts (1993); and S. Ryan, Ethnic Conflict and International Relations (1990).

3. Universal Declaration of Human Rights, UN Doc. A/810 (1948).

these assumptions as ideological truths. Peck's uncritical reading of the various UN conventions within the overall thesis that if only all the instruments were in place wars would end, reflects the ideological supremacy touted by the West with the implosion of Communism and "the end of history".

Peck's examination of preventive diplomacy is more guarded. Here she stresses early prevention and makes an interesting proposal to develop UN conflict prevention and resolution centres in regions as part of decentralization, emphasizing traditional methods of conciliation, arbitration, or adjudication (pp. 150-163). She also calls for strengthening international law and its instruments to settle international disputes, including the International Court of Justice. For intra-state conflicts, she wishes to strengthen human rights monitoring instruments. In this discussion, she is able to show how strengthening traditional frameworks will be helpful without assuming the kinds of ideological positions mentioned above (Chapter 10).

The book concludes with three chapters calling for strengthening the UN's power-based approach, giving the UN the resources it needs to become a more effective system, and improving the UN as a dispute settlement system. Peck is concerned with a more subtle understanding of power than "carrots and sticks" (p. 217) and explores interesting ways in which power can be used more effectively by the Security Council for intra-state problems, including discussions of "Third Generation Peacekeeping" (p. 224) and sanctions, as well as a helpful summary of how the different forms of power are "manifested" by the Security Council (p. 217). In order for the UN to become a more effective system, it is postulated, the problem of scarce resources must be addressed. Peck states that "[i]f [...] resources could be brought into line with expectations, the United Nations could be transformed almost overnight into a vibrant organization" (p. 256). She then goes on for over two pages to describe what would happen after this transformation, concluding with a plea for more preventive activities before conflicts erupt and an enlightened notion of self-interest by states that looks to long-term, collective responsibility.

The 50th anniversary of the United Nations should have been the appropriate moment for serious reflection. After all, 50 is an age where there is the right balance between wisdom and energy. There have been a plethora of proposals for UN reform, even a proposal for a new charter.[4]

4. M. Bertrand & D. Warner (Eds.), A New Charter for a Worldwide Organisation? (1997).

https://doi.org/10.1017/S0922156597210435 Published online by Cambridge University Press

How seriously these proposals have been taken, how changes can be actualized, is not only a question of "political will". It demands the intellectual courage to examine assumptions of liberal internationalism as they relate to the current environment. The problem is not just Jesse Helms and US isolationalism. For those who believe that the Cold War was won and that liberal internationalism is bound to succeed, there is little motivation for serious stock taking. Unfortunately, it is the rare victor who looks in the mirror at the apex of power, realizing that when the pendulum is at the top of its arc, it is ready to fall. And, unfortunately, the 50th anniversary turned out to be an occasion to lament the lack of resources and efficiency instead of an opportunity to engage in reflection about basic assumptions. The end of the Cold War may have hindered that reflection.

Connie Peck's book is helpful as a review of many of the technical aspects in the new arsenal of dispute settlement/conflict prevention literature, but it does not help us along the path of reflection about the assumptions behind that arsenal. The shift from traditional dispute settlement to new types of conflicts and actors requires deeper analysis. Elaborate procedures were worked out by international lawyers and diplomats over a long period of time for very specific situations. The window of opportunity offered at the end of the Cold War does not mean a natural extension of those procedures throughout the world through western social science via the United Nations. For, if any lessons were learned at the end of two major wars, it is that post-war euphoria and arrogance by the victors can itself be part of the problem and lead to future conflicts. Now that the questions of peace and security that haunted the world after 1945 seem to be on the back burner, it is the appropriate time to examine different levels of conflict and the appropriate institutional responses.

For it is important to distinguish between genuine threats to peace and security and good governance and conflict prevention. It may be that in the long run, grouping these activities under one umbrella is both confusing and counter-productive. Dispute settlement is not the same as conflict prevention or conflict resolution. And talking about the United Nations as a system to oversee both dispute settlement and conflict prevention/resolution places enormous expectations on an institution that is fighting for its very survival. The first Article of the UN Charter distinguishes between different levels of action for promoting peace as well as the role of the UN to that end. Amid the euphoria at the end of the Cold War, perhaps we should return to those distinctions to better align means and

ends in order to ensure that the post-post-Cold War era will not repeat the errors of the past. The movement from dispute settlement or collective security to addressing deep-seated economic and social causes of conflict is considerable, and to imagine the United Nations as the institutional umbrella for that movement is more a leap of faith than a political reality.

*Daniel Warner**

* Deputy to the Director for external relations and special programmes, Graduate Institute of International Studies, Geneva, Switzerland.