SELF-DETERMINATION, AND KOSOVO

Escaping the Self-Determination Trap, Leiden and Boston, Martinus Nijhoff Publishers, 2008, 144 pp + 2 Annexes + Bibliography, Hardback, Euros 50, ISBN 978-90-04-17488-7, and

Contested Statehood: Kosovo's Struggle for Independence, Oxford, O.U.P., xxviii + 321 pp (including Bibliography + 2 Appendices + Index), Hardback, $40.00, ISBN 978-0-19-956616-7,

both by Dr. MARC WELLER

The right of peoples to self-determination, like the right of revolution from which it springs, is a doctrine dating back to time immemorial. Although packaged and sold tightly as a vehicle with which to end colonialism during much of the Cold War, the dissolution of the former Socialist Federal Republic of Yugoslavia has given self-determination something of a new life, in that the doctrine no longer fits its former straightjacket. For example, roughly one-half of all on-going armed conflicts today are purportedly in pursuit of one or other form of self-determination, and the recent claims to territorial independence asserted by Kosovo, South Ossetia and Abkhazia, to name but a few, have placed the self-determination of peoples squarely in the international spotlight once again. In particular, much doctrinal discussion has been generated ever since the non-Serb majority in Kosovo voted for and issued a "unilateral declaration of independence" (UDI) from Serbia on 17 February 2008,[1] so much so that the United Nations General Assembly on 8 October of that same year

[1] "Full text: Kosovo declaration", 17 February 2008, news.bbc.co.uk/1/hi/world/europe/7249677.stm.

requested an advisory opinion from the International Court of Justice (I.C.J.) as to the legality in international law of the Kosovo UDI.[2] At the time of writing, the I.C.J. proceedings are pending,[3] but the request itself underscores the deep ambivalence of states in the post-Cold War era in relation to issues such as self-determination, terrorism, and secession.

These two succinct monographs by Dr. Weller address these and other topics thoroughly and with clarity.[4] The author is a Reader in International Law and International Relations at Cambridge University, and is a Fellow of its Lauterpacht Centre for International Law. He is also Director both of the European Centre for Minority Issues and the Cambridge Carnegie Project on the Settlement of Self-Determination Disputes through Complex Power-Sharing. He is thus extremely well-placed to illuminate the phenomenon of self-determination in general, and the many new developments in the doctrine during the post-Cold War era specifically.[5] Moreover, as Dr. Weller participated in most of the international settlement attempts on the future status of Kosovo, including the Carrington Conference, and the

[2] "Request for an advisory opinion of the I.C.J. on whether the unilateral declaration of independence of Kosovo is in accordance with international law", U.N.G.A. Resolution 63/3 of 8 October 2008, U.N. Doc. A/RES/63/3, Agenda item 71.

[3] Public hearings on the matter are to begin on 1 December 2009, at the Peace Palace in The Hague. "I.C.J. Press Release (Unofficial)", No. 2009/27, 29 July 2009, www.icj-cij.org.

[4] Location page and chapter numbers are for indicative purposes, only, as the given topics are discussed at many points in each monograph.

[5] See www.intstudies.cam.ac.uk/staff/weller-marca.html.

Rambouillet and Ahtisaari negotiations, he is well-equipped to provide an analytical, eye-witness account of the wider potential for peaceful resolution of such disputes, as well as of the causes for failure in high-level international diplomatic interventions and engagements concerning secessionist self-determination.

Since the advent in 1945 of the United Nations Charter,[6] the right of peoples to exercise their self-determination has held a place for individual group aspiration within the structural tensions created between the twin over-arching international principles of the maintenance of international peace and security, and of the non-intervention by states in the internal affairs of each other.[7] While the principle of self-determination certainly has a pre-Charter existence,[8] the United Nations effectively elevated the principle, albeit somewhat rhetorically, as a foundation stone on which to build future friendly relations between states, and equal rights. However, while one may speak safely today of the acceptance in customary international law of a right to self-determination,[9] and more controversially perhaps, of a "right" in the sense of *jus cogens*, it soon became apparent in the post-war era that there were three main

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[6] U.N. Charter Articles 1(2) and 55 ("principle(s) of equal rights and self-determination of peoples").

[7] U.N. Charter Articles 2(4) and 2(7), respectively.

[8] *E.g.*, the principle of self-determination was proclaimed in the French Revolution, and developed during the nineteenth and twentieth centuries. See also *Aaland Islands* [Spec. Suppl. 1920] 3 LNOJ 3.

[9] E.A. Laing, "The Norm of Self-Determination, 1941 – 1991" [1993] 22 Int.Rel. 209, at 222, quoting I. Brownlie in 1973: "self-determination [is] a legal principle" (citation omitted).

difficulties with the principle of the self-determination of peoples: which peoples are so entitled, which rights may be exercised, and whether a subject people can secede territorially. The Charter is silent on all three points, and states have struggled ever since to contain exercises of self-determination within existing state boundaries – a task that continues to impose practical challenges to states in that, on the one hand, a violent secessionist movement can destroy existing state boundaries, while on the other, the state is under a fundamental international duty to keep the peace internationally.

The solution during much of the Cold War era became an attempt to differentiate between "internal" and "external" exercises of self-determination. Internal self-determination could be employed to address such issues as good governance, equal rights, and forms of devolution. In contrast, a "right" to exercise external (or secessionist) self-determination was cast in territorial terms, and confined legally to those peoples inhabiting former colonies and certain non-self-governing territories, as such territories are deemed to have a "status separate and distinct from the territory of the state administering it".[10] In this way, any putative right to struggle, and to use force to achieve secessionist self-determination could be contained within a wider anti-colonial agenda, designed as much as for anything else to provide a vehicle to certain states with which to gain access more quickly to former colonial resources and other trade concessions. Nonetheless, as former colonies and non-self-governing territories slowly regained their independence during the 1960s and 1970s, the membership and voting patterns in the U.N. General Assembly began to alter, such that support for self-determination in U.N.G.A. resolutions slowly gained in

[10] U.N.G.A. Resolution 2625 of 24 October 1970, adopted by consensus.

momentum to favour, first, the right of peoples to use all available means to achieve it,[11] and secondly, the entitlement of "all peoples" to self-determination.[12] However, while this change in political attitude seemingly provided a means of redress for peoples inhabiting territories far beyond so-called "salt-water" imperialism, if not yet all subjects of historic conquest or other perceived injustice, case law did not quite yet follow suit.

On the other hand, the I.C.J. may have only ever confirmed the right in the context of colonialism, but it has never expressly so confined the principle.[13] It is thus of note that the Kosovo UDI has recently afforded the U.N. General Assembly with a prime opportunity to seek advisory guidance from the I.C.J. which might shed light on the future practice of entitlements to self-determination, for example, as to whether a growing recognition of individual rights entitlements has effected readjustments to the former importance of inviolable state territorial boundaries and the non-interference principle. Further, with the end of the Cold War, it has today become arguable that a less-centralised international environment is in fact more conducive to a greater pace of settlement in many older liberation conflicts, such as that in Northern Ireland, and

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[11] See, *e.g.*, U.N.G.A. Resolutions 3070 (XXVIII) Article 2 of 30 November 1973, and 3246 (XXIX) Article 3 of 29 November 1974.

[12] U.N.G.A. Resolution 2625 of 1970, on Friendly Relations.

[13] *Legal Consequences for States of the Continued presence of South Africa in Namibia (South West Africa) Notwithstanding S.C. Resolution 276* (1970) (Advisory Opinion) [1971] I.C.J. Rep. 16, at 31 (principle of self-determination held applicable to all the U.N., specifically, all peoples and territories which "have not yet attained independence").

this argument forms one thread of Dr. Weller's approach in *Escaping the Self-Determination Trap*. It is equally arguable that a more flexible world has instead facilitated a new generation of "liberationist" struggles, such as those waged in the former territory of Yugoslavia throughout the 1990s. For this reason, the author seeks not only to demonstrate a tendency to failure of the strict, classical approach to self-determination in resolving liberation struggles peacefully, but further, to present the wide range of settlement options which actually do exist, as based on real case examples.

In *Escaping the Self-Determination Trap*, the author, in terming the principle a "privilege" rather than an enforceable "right", begins by highlighting the many pitfalls of a strict approach by focussing on the alienating effects of a narrow, legalistic confinement of self-determination, in that, rather than prevent conflict, a narrow approach has instead served to generate it. For example, the doctrine was "framed to apply only in the … narrowly-defined circumstances of salt-water colonialism that practically no longer exist", "there is no secession from secession" (p. 16), and "groups fighting … outside of the colonial context are classified as secessionist rebels and, potentially, terrorists" (p. 17). Therefore, in cases arising outside the colonial context (Chechnya, the Basque country), or where a sub-unit or minority in control of territory wishes to secede again (Sri Lanka, the Philippines), or where the very implementation of colonial self-determination is challenged (Mayotte, Eritrea, Kashmir), "the international system is structured in such a way that actually assists the central state in ensuring their defeat" (p. 17). Nonetheless, the reality is not always (or indeed, ever) so straight-forward, so the adoption of any particular legal approach to one or other form of self-determination pertaining "only" to one or other people means little if anything to the approximately 30 on-going liberationist conflicts at

present, the additional 55 or so campaigns that might yet become violent, and a further 15 settled conflicts which could re-ignite at any point (p. 13).

Accordingly, the author proceeds with some care in *Escaping the Self-determination Trap*, the first sentence of which states "self-determination kills". After introducing the concept of self-determination itself, and addressing the content of the narrow, classical right initially attached to it in the U.N. era, he reviews other, equally viable frameworks for exercises of self-determination which not only have proved successful in helping to restore both domestic and international peace and security, but further, which have come to form a much wider set of options for future reference than one might otherwise have thought. In recognising that most post-Cold War liberation conflicts usually range far beyond the colonial context, he posits that those groups involved in them are almost-invariably reaching to the rhetoric of self-determination to rationalise their violent actions. In so doing, he refers to case examples which elsewhere might be viewed as an overly-broad inclusion within the principle, presumably in an effort to locate additional settlement tools. This broad approach does, however, approach the essence of the more timeless goal self-determination represents far better than the early post-1945 anti-colonial confines, and simultaneously encourages a more penetrating consultation of local and international practice to date for purposes of application in less traditional contexts. The result is a very broad range of choice indeed of otherwise-ignored settlement tools.

The presented structure of these different state approaches ranges from "constitutional" rights and procedures (however unsuccessful in reality, e.g., Burma, the U.S.S.R., the former Yugoslavia) (pp. 46 – 58), "remedial" self-determination to redress gross state oppression (usually involving the intervention of third states, *e.g.*,

Kosovo, Bangladesh) (pp. 59 – 69), through to "conditional" forms of self-determination (triggered by specified external or internal events, *e.g.*, Moldova - Gagauzia, Papua New Guinea - Bougainville) (pp. 123 – 125). He spends several short chapters on "deal-making" arrangements, in which a bargain of sorts has been struck between the warring sides, such as relinquishing claims to a right to self-determination in exchange for guarantees of greater autonomy (*e.g.*, Spain - the Basque Country, Ukraine - Crimea, China - Hong Kong) (pp. 78 – 90), deferrals of substantive settlements (time-buying, essentially, *e.g.*, South Ossetia, Abkhasia, Western Sahara, East Timor) (pp. 113 – 118, 126 – 135), and the better-known formats of federalisation, confederation, or union in one or other form of regionalism (*e.g.*, Chechnya, Quebec, Nagorno-Karabakh) (pp. 91 – 112). There is also a chapter devoted to "effective" entities, which are described as existing either with the "consent of the relevant central authorities" (*e.g.*, Malaysia - Singapore, the former Czechoslovakia) (p. 70), or, as in Somaliland, where an effective independence, albeit one unrecognised by the international community, has lasted for nearly 20 years on the basis of prolonged separate existence.

Approximately 55 states to date have afforded their recognition of the effectiveness of Kosovo's UDI (p. 70). However, even should one or other form of self-determination become effective *de facto*, it is noted at several points in *Escaping the Self-Determination Trap* that any notional claim to independence achieved by means which violate rules of *jus cogens*, such as the perpetration of genocide, can never attract outside state recognition, whether based on declaratory or constitutive recognition factors, as being in violation of international law. As for the opposite situation (independence declared to escape gross oppression), the highly-controversial deployment of N.A.T.O. in 1999 to prevent the ethnic cleansing of Kosovo's

Albanian population led to on-going U.N. control and administration of all civil and military functions in the former Serbian province in order to guide Kosovo eventually to its own form of self-government. Kosovo, having already declared its independence (ineffectively) in 1991, certainly made it clear throughout the following decade of high-level status negotiations that the eventual restoration of Serbian control was undesirable. However, after the Kosovar UDI in early 2008 (also opposed, predictably, by Russia, a long-time Serbian ally), and referral of its legality to the I.C.J., Russia became embroiled in an armed conflict between itself and Georgia over South Ossetian claims of self-determination,[14] ostensibly to prevent alleged ethnic cleansing by Georgia. Whether or not utilised by Russia to communicate a warning to the I.C.J. of the dangers of Kosovar independence,[15] any suspicion of manipulation makes equally clear that controversial aspects of self-determination are capable of inhibiting progress between states in many areas of international life.

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[14] See, e.g., E. Barry and J. Kanter, "Report on Georgia War Faults Both Sides", 29 September 2009, www.nytimes.com/2009/10/01/world/europe/01russia.html?_r=1.

[15] Cf. the Council of Europe Independent Fact-Finding Commission on the Conflict in Georgia (30 September 2009), para. 11, p. 17 ("[r]ecognition of breakaway entities such as … South Ossetia by a third country is … contrary to international law in terms of an unlawful interference in the sovereignty and territorial integrity of the affected country, which is Georgia"), news.bbc.co.uk/1/shared/bsp/hi/pdfs/30_09_09_iiffmgc_report.pdf. No U.K. legal academic was on the Commission.

Nonetheless, the "fact" of Kosovo's unilateral action in the face of vociferous Serbian opposition makes it equally imperative that wider extra-legal dimensions of international life are also taken into account when the time arrives to assess what it is exactly the self-determination of peoples means, and what it is exactly that existing state territorial borders do, if the latter are not simply to demarcate the boundaries of a prison. Due to its breadth of case example, *Escaping the Self-Determination Trap* is ideal for use by students and researchers alike, as well as for students and practitioners who wish to grasp the subject rapidly by means of a well-structured and completely appropriate approach to conflict-settlement in today's world. The monograph would work well as a required text for a self-contained post-graduate module in law or international relations, or for use as quick reference. Many chapters are brief and to the point, and provide the necessary background, terms and framework of analysis, and case examples with which to illuminate the various dimensions of self-determination. It also has two extremely useful annexes. Annex I outlines the distinct rights claims pertaining to (1) colonial and analogous self-determination entities, (2) remedial exercises, (3) the constitutional parameters of entitlement, (4) effective (unprivileged) entities, and finally (5) unlawful entities (violators of *jus cogens* rules) regarding which third states should afford no recognition and work instead to restore the previous situation. Annex II is longer, and lists in bullet point form the many self-determination settlements per continent, and the steps taken to achieve them. There is an extensive bibliography (pp. 171 – 224), where the interested reader can obtain further source materials.

The author's subsequent monograph, *Contested Statehood: Kosovo's Struggle for Independence*, deals specifically with the struggle for independence which has been waged for two decades by the majority in Kosovo, and is a different kettle of fish

entirely. While somewhat longer than the monograph just reviewed, *Contested Statehood* is far from a quick read (and is in smaller font size). However, in view of the specific technicalities entailed by the Kosovo struggle, it is useful to have some background knowledge to and basic overview of the events which have transpired in the former Yugoslavia since the Cold War ended,[16] the most recent of current note being the UDI highlighted above. It is also useful to have some acquaintance with Public International Law, Constitutional Law, and International Humanitarian Law. In overview, Yugoslavia was constructed for largely political imperatives after the first world war; from 1941 - 1945 it was bitterly divided within by Axis occupation, pockets of armed resistance by nationalist and communist forces to occupation, and a civil war.[17] Once reunified, Yugoslavia's first Federal Constitution of 31 January 1946 provided for six republics (Slovenia, Croatia, Bosnia-Herzegovina, Macedonia, Serbia, and Montenegro), and two autonomous regions (Kosovo and Vojvodina) associated with Serbia. The constituent parts of each administrative unit had experienced security-related population transfers over centuries, many of them forced, but certainly between 1946 and 1990, overt or blatant nationalist or religious tendencies were generally suppressed.

Yugoslavia was structured constitutionally with a dual concept of sovereignty: the sovereignty of the republics, and the sovereignty of the "nations", or peoples. During

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[16] A useful account, albeit in the context of the lead-up to the war in Bosnia-Herzegovina, is provided in *Prosecutor v. Dusko Tadic a/k/a "Dule (Opinion and Judgement)*, Case No. IT-94-1-T (7 May 1997), paras. 55 – 79, 85 – 96.

[17] In 1945, order was re-imposed by the Serb Partisan Josip Broz Tito, later known as Marshal Tito. He died in 1980.

the second world war, national liberation forces allegedly promised Kosovo its self-determination, but Dr. Weller notes that the decision by Kosovo to associate with Serbia as an autonomous province was "expressly conditional upon a 'federal' Serbia, *i.e.*, Serbia, and hence also Kosovo as part of a federal structure" (p. 32), as provided for in the 1946 Constitution. Comprising an area of approximately 10,887 square kilometres (p. 28), the Kosovo Albanian population, always the majority, have had a long experience of Serbian repression, and it was only with the coming into force of the new 1974 Constitution, and a strengthened devolution of power, that Kosovo was fully-recognised as a highly-autonomous federal entity with strong representation in the federal institutions - a position rather less than a full republic but much more than mere autonomy (p. 34). This latter point is crucial in that, to modern legal traditionalists, classical international law requires stability in external state territorial boundaries in order to maintain stable inter-state relations, and hence to form the bedrock of sovereign equality and peace. As for internal boundaries, it is Dr. Weller's position that the federal, highly-autonomous status attributed to Kosovo in the 1974 Constitution would tend to imply that Kosovo, too, had a similar constitutional right to independence as did the other republics at the point of Yugoslavia's dissolution (*passim.*), and that accordingly, Serbia could have no possible right constitutionally to abrogate Kosovo's federal status.

Further, and in light of the anti-colonial agenda of the post-1945 era, a former federal or similar internal status indicates a definable territory, the importance of which cannot be over-estimated should independence be contemplated. This is the

doctrine of *uti possidetis*,[18] without which there is no arguable "entitlement" to secede, as was discovered by the Bosnian Serbs in their attempt to secede from Bosnia-Herzegovina after the independence of the latter had been recognised by third states. In other words, any potential "right" to secede territorially from a state beyond the colonial context is also made dependent on whether there are pre-existing, territorially-defined administrative units of a federal nature, which alone might "acquire the character of borders protected by international law".[19] More importantly, should such a definable territory exist, it then becomes arguable that a seceding entity may request (and obtain) the assistance of outside third states. Without such territory, there has only traditionally been civil war as a means of redress,[20] at which point, international law requires strict non-assistance to either side. Nonetheless, while it is of course true that the key to independence may indeed appear to lie in successful revolutionary violence, and while there is no express international law prohibiting secession *qua* secession, it should equally be remembered that the risk of a wider war explains the grudging international acknowledgement of a narrowly-construed

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[18] See *Burkina Faso v. Republic of Mali* [1986] I.C.J. Reports, pp. 554, at 565, in which the Court noted that the principle of *uti possidetis* was not affected by rights to self-determination.

[19] "Conference on Yugoslavia, Arbitration Commission Opinions 1 – 10 on Questions arising from the Dissolution of Yugoslavia [11 January and 4 July 1992], Opinions 2 and 3", reprinted in [1992] 31 I.L.M. 1488, 1497 – 1498, and 1499 – 1500, respectively.

[20] As noted by Shaw, "international law treats civil wars as purely internal matters, with the possible exception of self-determination conflicts". M.N. Shaw, *International Law* (C.U.P., 6th ed., 2008), p. 1148.

entitlement to self-determination in situations involving *only* colonialism or at a stretch, alien occupation, or racist regimes. Therefore, the status of Kosovo as both a federal entity and a province within a republic rather complicated matters.

The devolution of power provided for in the 1974 Constitution had another unfortunate side effect: it facilitated the growth of nationalism and ethnocentrism. With grave economic problems emerging by the late 1980s, and the growing decline of Communism in Eastern Europe generally, Yugoslavia, and Serbia in particular, moved quickly towards major political crisis. In 1989, Serbia attempted to alter the voting equality of the republics, and took action to strip Kosovo of its autonomy.[21] In 1990, multi-party elections were held for the first time in the separate republics: nationalist parties emerged victorious. When coupled with the widespread economic difficulties and a growing sense of political crisis, it quickly became obvious the federation was headed for a break-up, which indeed occurred soon after Serbia unilaterally revoked Kosovo's autonomous status, an act deemed vital to Serbia's policy to restore a 'Greater Serbia'. This threatened wider Serb autocracy, led by the Serb nationalist president Slobodan Milosevic, effectively spooked the other Yugoslav republics into declaring their independence from the federation (Chapter 3). Years of armed conflict ensued, as first Slovenia, then Croatia, Bosnia-Herzegovina, Macedonia, Montenegro, and finally Kosovo, declared their independence and left, or struggled to do so. With a "mixed" war (civil and international) erupting in Bosnia-

[21] 1989 was the anniversary of the Battle of Kosovo Polje (Field of the Blackbirds) on 15/28 June 1389 (St. Vitus Day), at which Serbian independence was lost to the Ottomans until 1878.

Herzegovina, and the establishment of the I.C.T.Y. in The Hague,[22] a short N.A.T.O. campaign in September 1995 was finally required to stop the ethnic cleansing of the Muslim population, effectively forcing an end to hostilities, and the signing of the Dayton Peace Accords on 14 December 1995.[23]

Milosevic could now direct his attention to the "Kosovo problem", about which international concern had been expressed for some time due to the deteriorating situation there. The key lay in the population mix. Some 90 percent of the population of Kosovo are ethnic Albanian, the Serbs form seven or eight per cent, and the rest are comprised of small groups of Gorani, Roma, Bosniaks and others. In contrast, Albanians comprised only a minority overall within Yugoslavia as a whole, so a federal status for Kosovo was needed in order to satisfy the Albanian desire to preserve their identity, and hence permit their self-determination. A first Kosovo declaration of independence, issued on 22 September 1991, naturally was rejected by Serbia. Kosovo organised a policy of passive resistance, a government in parallel under its chosen president, Ibrahim Rugova, and the Kosovo Liberation Army was formed (p. 39). By 16 June 1998, Russian President Boris Yeltsin had invited Milosevic to Moscow in order to attempt to discourage further military intervention in Kosovo by Serbia, and U.N. Security Council Resolution 1199 (1998) of 23

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[22] "International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991", U.N.S.C. Resolution 827 of 25 May 1993 (adopted unanimously).

[23] "The General Framework Agreement for Peace in Bosnia and Herzegovina, and Annexes, 14 December 1995", www.ohr.int/dpa/default.asp?content_id=380.

September 1998 affirmed that the situation in Kosovo constituted a threat to peace and security in the region. Meanwhile, high-level negotiations to address the situation in Kosovo had begun largely after the London Conference in late August 1992 (at which Kosovo was all but ignored) (p. 47), with the Hill negotiations (Chapter 6) and Holbrook Mission of 1999 (Chapter 7), the Rambouillet Accords of 1999 (Chapter 8), and the Ahtisaari Comprehensive Proposal (Chapter 12), and it is largely the detail and outcomes of these negotiations which form the overall subject matter of *Contested Statehood.*

Throughout the many efforts made by the U.N., the E.U., N.A.T.O., the O.S.C.E., sub-groups such as the International Contact Group (the U.S., the U.K., France, Germany, Italy, and Russia), humanitarian organisations, N.G.O.s, and others, to peacefully resolve the situation between Serbia and Kosovo, Kosovo suffered from its uncertain legal personality, and thus from inequality as a negotiating partner (p. 201). Serbia resented the external interference in what it considered to be an 'internal matter' (p. 84), while the growing list of atrocities perpetrated against the Kosovars demanded international attention and involvement. Kosovo was often hard-pressed to compromise on its own demands, yet whenever a deal seemed to have been struck, Serbia (usually with Russian support) could and would counter-propose and/or make changes to agreed terms, often at the last minute. By 20 October 1998, N.A.T.O. was once again threatening to use armed force both to stop the perpetration of violence against the majority in Kosovo and to "encourage" a more-focussed Serbian participation in the international negotiations to resolve the conflict. Despite these many efforts, matters moved finally to a semblance of resolution only after N.A.T.O. was again felt forced to launch a bombing campaign on the basis of humanitarian intervention in the Spring of 1999, in order to put a stop to the ethnic cleansing of the

Kosovo Albanian population by Serbia (Chapters 9 and 10).[24] Milosevic, head since 15 July 1997 of what was now the Federal Republic of Yugoslavia, would in turn find himself indicted on 24 May 1999 by the I.C.T.Y., along with four other of the most senior leaders of the F.R.Y. and Serbia, on the basis of command responsibility.[25]

The N.A.T.O. campaign in 1999 resulted in the U.N. assuming overall control of Kosovo. U.N.S.C. Resolution 1244 of 10 June 1999[26] provided a mandate under Charter Chapter VII to a N.A.T.O. peace force under U.N. oversight, with a view to 'tutelage' for eventual self-government. Kosovo began work on the process of "standards before status", crucial to which was respect for human and minority rights, and on drafting a constitution (Chapter 11). Negotiations led by the International Contact Group to solve the issue of Kosovo's status recommenced, initially with the participation of Serbia and Montenegro, and subsequently, with Serbia alone, after Montenegro, too, left the federation. Milosevic resigned on 6 October 1999, having finally acknowledged the victory of Vojislav Kostunica after heavily-rigged elections were annulled in Kostunica's favour by the Yugoslav Constitutional Court, which certainly helped to remove one major impediment to settling the Kosovo peace

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[24] The N.A.T.O. bombing campaign lasted from 24 March - 11 June 1999. The use of force for humanitarian intervention is highly controversial in international law. See *Contested Statehood*, p. 164 notes, for citation to the different authorities.

[25] See, e.g., "Prosecutor's Statement, 'Jurisdiction over Kosovo', 10 March 1998", Fifth Annual Report of the I.C.T.Y., U.N. Doc. A/53/219, S/1998/737 (10 August 1998), para. 118, p. 31; U.N.S.C. Resolutions 1203 of 24 October 1998, and 1207 of 17 November 1998.

[26] Passed 14 votes to 0 (China abstaining).

negotiations. Even then, however, status could not be agreed. The U.N. Special Envoy Martti Ahtisaari invited the parties to further discussions in Vienna on 12 January 2006, and presented his plan to the U.N. Security Council on 26 March 2007, recommending what in effect was independence in all but name.[27] After this, it could be argued (if not sincerely hoped), the game was up for Serbia, but it was not yet to be: Russia (and other states) objected to the Ahtisaari Comprehensive Proposal, began directing personal attacks at the Special Envoy, and alongside Serbia, demanded a new round of negotiations. No doubt in a spirit of "generous negotiation", the U.S., E.U. and Russia commenced by 9 August a further 120 days of negotiations, extended again until 7 December. With the presentation of their final report to the U.N. Security Council, the E.U. apparently indicated it would 'promptly' recognise a Kosovo UDI, which Kosovo proceeded to issue on 17 February 2008.

Thus it is that despite the many opportunities afforded to Serbia over the last two decades to settle the dispute with Kosovo, in particular, and ahead of the latter's claimed independence, for example, by respecting Kosovo demands for self-determination and restoring its high-level autonomy, "Serbia's actions in relation to the crisis were not just one, but possibly two steps out of sync" (p. 280). To no small extent, Serbian foot-dragging and general intransigence reminds this reviewer of Bertolt Brecht's play *Mother Courage*, in which the wilful blindness of a self-obsessed mother led to the loss of her children, her means of living – all, in fact, except herself, as she chased the profits of war. Be that as it may, *Contested Statehood* provides a fascinating insider's account of what no doubt will remain a

[27] The formal report included a separate recommendation for full independence.

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topic of huge interest to and debate for many years to come among those with an interest in "matters Kosovo", not least due to the uncertainties at this point of the outcome of the advisory proceedings before the I.C.J. As noted earlier, Dr. Weller is extremely well-placed to provide such an account, and has done so in a highly-detailed and well-resourced manner, along with the occasional *leitmotif* note provided as to the demeanour and *bona fides* of certain personalities, the décor and entertainment provided at certain chateaux or conference centres, etc. He is undoubtedly pro-Kosovo, but provides frequent, and easily digestible, digressions into the relevant international law, such as the on-going debate surrounding humanitarian intervention, the legality of the N.A.T.O. threats and use of force, and the activities and contributions of international institutions and N.G.O.s alike.

This monograph is unlikely to be used as a textbook, but would certainly be useful in terms of reference for students, researchers, academics or practitioners in the fields of international law, politics, history, international relations, and government. There is in particular an overwhelming amount of detail regarding the structure and operation of this or that framework agreement or proposal, the counter-proposals and compromises, and those otherwise "final" documents which never actually were. It is not always an "easy read", as Dr. Weller adopts a more themed approach (history, human rights violations, shuttle diplomacy, the law on secession and the use of force, etc.), than a strictly chronological one, but this reviewer is all-too-aware of the necessity to weave back and forth when attempting to pick up the disparate and conflicting threads of accounts of events in the Balkans. Further, students of history for example are familiar with synchronous chronology charts, which detail events occurring simultaneously at any given point in time, and something similar would perhaps prove beneficial to such works as *Contested Statehood*. Having said that, a

short bullet-point chronology and the detailed table of contents were invaluable throughout, as were the index and extensive bibliography. In conclusion, the slice of time addressed in *Contested Statehood* illustrates the political cauldron the Balkans has long represented; if the problems, challenges, and troubled history there are not to plague the region forever, such contemporary accounts as the struggle for Kosovo expounded in *Contested Statehood*, and the ways of seeing them provided in *Escaping the Self-Determination Trap*, need to continue to be written, and read.

E. CHADWICK*