

etc. Digging deeper into these issues Angle inevitably finds ‘something both different and more complicated’ than the usual Western interpretation (p. 222). Looking at dimensions of difference and similarity he finds differences between earlier and later Chinese thinking, and cross-cultural similarities between Western and Chinese thought as well as differences even within the contemporary Chinese discourse. That the contemporary Western discourse of human rights also spans great variations will be perfectly known to the readers of this journal.

Angle’s work is an excellent scholarly exposition of China’s rich philosophical tradition questioning many crude Western ideas about why the Chinese government continuously violates the international standards of human rights. But I have a few problems with the overall approach, which to my view rather unreflectingly mixes philosophical discourses and political realities and also mixes texts from scholars, activists and government spokespeople, which are all taken as representing a ‘Chinese’ idea or concept. Very few people will disagree that engagement and dialogue is a good thing and should be pursued in order to improve the protection of human rights in China. But the author tries to further this aim by quoting Western philosophers on the possibility of communicating in spite of differences of opinions and referring to Chinese philosophical discourses accepting concepts of rights. One consequently could get the idea that human rights violations in China take place because Chinese leaders do not believe in cross-cultural communication or do not know their own philosophical tradition. I do not believe this is the case. The injustices perpetrated by Chinese authorities against its own people are, in my view, linked more to the social, economic, and political structures of the present society than to the leadership’s non-engagement with other cultures or the Chinese philosophical past. This said, the book is a brilliant contribution to cross-cultural dialogue.

The two books prove that it certainly is possible and desirable to pursue a dialogue across the divide between East and West and

that there is much to be learned about each other to get a truer picture of which differences really matter and which do not. However, they only indirectly address the serious (political) question that lingers beneath the wish to communicate, namely how to prevent the human rights violations taking place in China or how exactly to bear differences in mind, yet still comply with international standards.

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Peter Radan, *The Break-up of  
Yugoslavia and International Law*,  
London and New York: Routledge,  
2001, Pp. 288. £75 (hardback). ISBN:  
0415253527.

This book, published in the Routledge Studies in International Law series, tackles one of the most disputed cases of state succession in recent history. Opinions continue to differ regarding the validity of the legal basis for the declarations of independence of the former republics of Yugoslavia and the lawfulness of their secession. Considerable ambiguity surrounded the claim made by Yugoslavia (Serbia and Montenegro) for state continuity until its admission to the United Nations in 2001. The reaction of the international community, including the United Nations and the European Community, during the Balkan crises attracted substantial criticism. The break-up of Yugoslavia placed notions of self-determination and secession at the forefront once again of the international legal and political debate in the 1990s.

The author of this volume, an Australian scholar and author of several articles on the question of secession, takes a critical view of the outcome of the break-up of Yugoslavia in order to make the case that there are no obvious legal reasons why the break-up of a federal state should take place using the borders of former federal republics. The

author points to the confusion surrounding the scope and content of self-determination and secession, and questions the position that a right to secession, in principle, is not accepted under international law. He proposes to revisit the legal framework providing for the right to self-determination of peoples and, most importantly, to look at the meaning of 'peoples'.

The author argues that a 'people' may also include different national groups within the territory. Moreover, the right to self-determination makes the right to secession legal in specific circumstances (Introduction). Radan discusses the relationship between a 'nation' and a 'people' by introducing two theories of self-determination: classical theory and romantic theory. The former sees 'nation' as 'the population of a certain territorial unit', the latter as 'a cultural group based upon a common history and language' (at 11). This allows the author to draw the conclusion 'that the meaning of the words "nation", "nationalism" and "nation-state" is that as understood within the romantic theory of self-determination' (at 15). In the conclusion of Chapter 1, the author acknowledges the limited application of the right to self-determination in international law or, in accordance with his approach, in the classical theory that applies this right to the population of a territory. He argues, however, that: 'If the meaning of "people" according to the romantic theory of self-determination is correct, the right of a people to self-determination would permit secession of a nation from an internationally recognised state' (at 21). Radan is careful in pushing his approach and he makes a reservation to his arguments. 'It must be noted', he says, 'that the right to secede from a state on the romantic theory of self-determination is only a *prima facie* right' (at 21).

After this *detour* into political theory, he turns back to international law in Chapter 2 and examines whether the reading of existing international law documents confirms the meaning of 'peoples' as referring solely to a population of a territory. The author aims to sow a seed of doubt regarding the accepted meaning of 'peoples' in the UN Charter by

putting forward examples from the *travaux préparatoires* and his own reading of Articles 73, 76, 1(2), and 55. Other arguments invoked by the author deal with the territorial integrity of states, as provided for in Article 2(4) of the Charter, the non-viability of small states, and the perceived danger to international stability caused by the fragmentation of states. The author reaches the conclusion that 'Article 2(4) does not, of itself, guarantee the territorial integrity of states absolutely. Therefore, it cannot justify a meaning of people as being confined to the entire population of a state. In effect, Article 2(4) sheds no further light on the meaning of peoples as used in the Charter' (at 37).

In his attempt to dispel the mistaken inflexibility of international law concerning the meaning of 'peoples', the author in fact sifts through many examples and areas of law analysed typically in connection with self-determination. After the Charter, he examines decolonization with the aim of questioning the general application of *uti possidetis* in decolonization contexts. Radan lists cases where, in his view, the UN has not followed the principle and has in fact allowed changes in colonial borders submitting to 'the demands of nationalism' (at 40–41).

It is only natural that the author should also tackle human rights treaties containing the right of peoples to self-determination. The meaning of 'peoples' in common Articles 1 of the two International Covenants and the relevance of the right, if any, for the purposes of the rights enjoyed by minorities and provided for in Article 27 have been the subject of heated debate in relevant UN bodies. There is a wealth of literature on this issue. For a generally accepted presentation of Articles 27 and 1 in the Covenant on Civil and Political Rights, Radan refers to Cassese who argues that, as Article 27 contains rights of an individual belonging to a minority, a minority cannot be seen as a people for the purposes of Article 1, which refers to the entire population of a state. Radan counters this reading by saying that there is nothing in the text of, or practice regarding, common Article 1 that disqualifies minorities from being peoples

(at 49). Interestingly, Radan seems to come to a somewhat less aggressive conclusion when he notes: 'Of course, this does not mean that Article 27 suggests that a minority group is a people — nor does any other article in either of the two international covenants. Article 27 is silent on this issue' (at 49).

In his determined attempt to prove the point that the entire population of a state may consist of several peoples with the right to self-determination, Radan looks at the 1970 Friendly Relations Declaration and the jurisprudence of the International Court of Justice. While the record of arguments for and against is mixed, the author remains optimistic in his mission to prove that nations or even minorities may have the right to secede. Interestingly, he has to conclude that the right to secede is 'tempered by the condition that it can only occur when a state discriminates against, and thereby denies self-determination to, a group within that state' (at 67–68).

Having introduced his reading of the doctrinal framework, Radan re-examines the events in Yugoslavia leading to that country's break-up in Chapters 5 and 6. His decision to analyse Yugoslavia from a historical perspective, i.e., from the creation of Yugoslavia in 1918, is commendable. Clearly, a few years in the history of a state may not be sufficient for the purposes of decisions under international law; one may have to look well into the past to find significant factors. The author has clearly had access to documents and local debates in Yugoslavia in the original languages, thus providing an important opportunity for English-language readers to hear the other side of the story. In this respect the book makes a valuable contribution to legal scholarship.

One can also appreciate the clarity of the analysis of Opinions 1 and 8 of the Badinter Commission in Chapter 7 and the conclusion that the Commission could not determine that SFRY was in the process of disintegration (at 216). This issue has been beyond the reach of international law, at least until the particular Badinter decision set a different precedent. As far as the work of the Commission and its results are concerned, one has to agree with

the author that it has received very mixed reactions.

At this stage in the book, Radan comes to his main argument that there are no obvious legal reasons why the break-up of a federal state should take place along the borders of former federal republics instead of all the nations within the federation, if they so wish. In relation to the former Yugoslavia this would include, for example, the right of Albanians in Kosovo and Macedonia to decide on their preferred form of self-determination (at 247). The author does not claim that such rules concerning the right to self-determination of former federal entities and the applicability of the *uti possidetis* principle to include former administrative borders of a federation have necessarily been created. But he criticizes the outcome in the Yugoslav case as misguided and flawed — it was decided, according to the author, on the basis of the self-determination of federal republics.

The book is an interesting advocacy piece for the rights of certain national or minority groups within the new states of the Former Yugoslavia. By extension, as a matter of interpreting and applying international law, the arguments raised may have obvious implications for similar groups in other states. One wonders, however, whether such an exercise would not be more convincing and less vulnerable to criticism if the established premises were clearly presented for what they are. Arguments which mix together different legal and political concepts without elaboration may not be helpful either to the reader or to the argument of the book. The survey of and references to scholarly writings, which are quite rich in this area, could have been less partisan. Moreover, there are arguments and examples of state practice that support certain assumptions of the author, but which receive scant attention. For example, the opening for secession in the Preamble of the Universal Declaration of Human Rights could have been examined in greater depth by the author, given the purposes of his book (at 67–68).

It is nevertheless certainly advisable to revisit established premises in international law and to test whether they remain valid in

new world realities and/or in relation to the special circumstances of a particular case. After all, this is one of the purposes of legal scholarship. The author should be praised for his work in building a legally argued case in support of the aspirations of a certain ethnic group. It is often the case that weaker players in international relations do not have the understanding or the capacity to use international law in pursuing their claims.

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Eke Boesten. *Archaeological and/or Historic Valuable Shipwrecks in International Waters. Public International Law and What it Offers*. The Hague: T.M.C. Asser Press, 2002. Pp. 256, €70/\$ 67/£45 paperback.

Until recently a largely neglected subject in international literature — except for an increasing minority of *connoisseurs* — the international legal protection of underwater cultural heritage has deserved the renewed interest it has received from international scholars and practitioners. The reason for this interest is quite simple: the negotiating process which finally led to the adoption of the UNESCO Convention on the Protection of Underwater Cultural Heritage on 2 November 2001 has opened up an entire province of multiple interests. These had been omitted by and large from the Third UN Conference on the Law of the Sea, leaving unresolved what one author referred to as '*la dialectique de l'objet et le lieu*';<sup>1</sup> namely the issue of whether the regime of underwater cultural heritage should be determined by its nature or its

location. During that conference, the suspicions of the great maritime powers that coastal states may seek to extend their jurisdiction to the archaeological or cultural objects embedded in their continental shelves made it impossible to establish a more elaborate legal regime. This left the codified law of the sea with some inconsistencies and lacunae, with partial answers only to be found in the two articles in UNCLOS devoted to the underwater cultural heritage: Articles 149 and 303.

The real problem is that these two articles — a truly constructive ambiguity accepted in Montego Bay — are extremely problematic to interpret and do not provide a useful guide for the protection of underwater cultural heritage as a whole. Indeed, the regime created by these two articles — and a sometimes erratic domestic jurisprudence, mostly in the US — has given a talented group of scholars room to propose the application *tout court* of common-law admiralty rules to underwater cultural heritage. Among those pushing for such a strategy, we find Ms Eke Boesten, who adds to her legal background the unique opportunity of having been an observer at the UNESCO negotiations which drafted the 2001 Convention. As she explains at the end of her book, Ms Boesten professes to act 'as an independent international consultant to commercial explorers, archaeologists, multinationals and governments alike on issues relating to maritime cultural heritage' (at 256).

The aim of the author is clearly stated in the foreword of the book: 'Motivated by the feeling that there is a perceived legal lacuna with regard to an international legal system to cover activities affecting archaeological and/or historical *valuable shipwrecks*, the search for a *global system of legislation* to regulate such activities in *international waters* will be the subject of this book' (at 3, emphasis added). I have emphasized the three main ideas that limit the scope of Ms Boesten's research: first, she only deals with shipwrecks (that is, not with underwater cultural heritage as a whole); second, she seeks to offer an organized and generally accepted legal system (that is, for all types of valuable shipwrecks,

<sup>1</sup> H. Cassan, 'Le patrimoine culturel subaquatique ou la dialectique de l'objet et du lieu', in *La Mer et son droit. Mélanges offerts à Laurent Lucchini et Jean-Pierre Quéneudec* (2003) 127.