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**Book Review, Fragmentation and the International Relations of  
Micro-States by Jorri C. Duursma, 92 American Journal of  
International Law 359 (1998)**

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raised: how might the autonomy claims of sub-state actors be addressed without sacrificing the multiethnic, pluralist order that, after all, still typifies most states in the world? The flood of scholarship this question unleashed bore witness to the extent that international lawyers had come to regard this traditionally domestic task of state building as a challenge addressed to the international community at large. In these writings one sensed a hope that Europe, the birthplace of the Westphalian legal order, might provide useful models of autonomy that could help prevent the calamity of fragmentation from spreading to other regions.

Jorri C. Duursma's new book explores two important aspects of this European-based discussion: the evolution of the norm of self-determination and the experience of five European microstates—Andorra, Liechtenstein, Monaco, San Marino and Vatican City. Duursma begins with an ambitious series of questions directed toward connecting these two issues: "Can anything be learned from the already established Micro-States? How do they survive politically and juridically in the international community of States? What problems may future very small States be faced with? Is micro-statehood better than autonomy?" (p. 1).

Duursma's review of the experience of microstates is a new and interesting contribution to the ongoing debate over self-determination. While her discussion of these two seemingly disparate areas is comprehensive, informative and

*Fragmentation and the International Relations of Micro-States.* By Jorri C. Duursma. Cambridge, Melbourne, New York: Cambridge University Press, 1996. Pp. xxv, 450. Index. \$89.95.

A fear of national fragmentation continues to haunt discussions of self-determination. In the postcolonial era, many ask, where else can a norm promising autonomy to all "peoples" lead except to the devolution of established states into smaller and almost certainly unsustainable principalities? For many years this prospect clouded the application of self-determination to groups in the developing world, with the unfortunate consequence of tarnishing its prior role in the dismantling of colonial empires. The breakup of the former Soviet Union and Yugoslavia in the early 1990s unexpectedly brought the debate over self-determination to Europe. From the Alma Ata Declaration, to the Vance-Owen Plan, to the Badinter Commission opinions, to the Dayton Accords,<sup>1</sup> the question was

states of the Commonwealth of Independent States. Alma Ata Declaration, Dec. 21, 1991, 31 ILM 148 (1992). The Vance-Owen Plan was an early peace plan and constitutional arrangement for Bosnia and Herzegovina developed by the Co-Chairmen of the International Conference on the Former Yugoslavia. The plan would have divided the country into 10 provincial subunits. Report of the Secretary-General on the Activities of the International Conference on the Former Yugoslavia: Peace Talks on Bosnia and Herzegovina, UN Doc. S/2579, Annexes I-IV (1993). The Badinter Commission, named after its Chairman, Robert Badinter, was an arbitral body established by the European Community's Peace Conference on Yugoslavia. The commission's task was to answer legal questions related to the dissolution of the former Yugoslavia and the emergence of successor states. Its opinions addressed questions of recognition and self-determination, among others. Conference on Yugoslavia Arbitration Commission: Opinions on Questions Arising from the Dissolution of Yugoslavia, Opinions 1-10, 31 ILM 1488 (1992). The Dayton Accords were the general peace settlement for the conflict in Bosnia-Herzegovina. General Framework Agreement for Peace in Bosnia and Herzegovina, Dec. 14, 1995, 35 ILM 75 (1996).

<sup>1</sup> The Alma Ata Declaration formally brought an end to the Union of Soviet Socialist Republics and set out a framework for cooperation among the new

well organized, the precise relation between self-determination and the microstate—especially at this point in history—remains unclear. None of the European microstates was a product of forcible secession or the more systematic dismantling of states or empires at peace conferences following general wars. That is, none had cause to resort to a norm of self-determination in order to justify its claims to statehood. Nor could they have done so. At the time each of the microstates reached (roughly speaking) its current political status, international law did not recognize self-determination as a general norm. Today, four of the five microstates are members of the United Nations (neither Vatican City nor its alter ego, the Holy See, has ever applied for membership). Their right to statehood and entitlement to self-determination have therefore largely been settled, rendering many of the issues Duursma examines matters of history rather than of law. The international community has apparently moved beyond the arguments that led the League of Nations to reject Liechtenstein's application for membership in 1920 and that caused the League's legal counsel to disregard a complaint by Andorra in 1933 on the grounds that Andorran authorities lacked the constitutional capacity to make an appeal to the League.

The first section of the book is a concise and well-crafted review of how the norm of self-determination has evolved. Familiar sources are canvassed and thoroughly analyzed: the hesitant views of Woodrow Wilson; the Aaland Islands decision; UN General Assembly Resolution 1514 (Declaration on Colonialism); the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the UN General Assembly Declaration on Friendly Relations; the jurisprudence of the UN Human Rights Committee; and the opinions of the Badinter Commission. Duursma notes the strikingly similar procedural mechanisms called for by each of these sources—decision making by members within a group to map out its collective political destiny—and points out their link to the postcolonial notion of "internal" self-determination. In this view, a group exercising self-determination legitimizes both the form and the specific makeup of the national government rather than severing its links to a parent state. Duursma claims that such a "right to choose a form of government within a community without changing the boundaries" was "an accepted princi-

ple" of international law at the end of the Second World War (p. 11). This is a bold claim. Despite the enshrinement of this principle in Article 21 of the Universal Declaration of Human Rights ("the will of the people shall be the basis of the authority of government"), even proponents of a right to political participation would be unlikely to agree that this entitlement entered customary law at that early date.

Viewing self-determination as operating in this fashion—within existing states to define the appropriate relation between citizens and their leaders—is one way to reconcile a right to self-determination with the imperative of territorial integrity. Duursma does not elaborate the contours of a right so conceived, opting instead to focus on another means of reconciliation: recognition by third states. As Duursma writes: "Recognition does therefore not imply that a right of self-determination exists, but that the right of self-determination offsets the inviolability of the territorial integrity in the given case" (p. 80). Unlike an internal view of self-determination, which limits the class of right holders to existing territorial states, a resort to recognition by third states does not purport to define the scope of the right of self-determination. It continues to recognize the autonomy claims of substate actors but acknowledges the inability of law to affect in any meaningful fashion the political forces that inevitably accept or reject those claims.

There are problems with such an emphasis on recognition. First, there are few cases in which third states have actually recognized a people seeking to vindicate a right of self-determination against the wishes of a parent state.<sup>2</sup> By default, therefore, reliance on recognition would generally favor territorial integrity over autonomy claims. Second, making recognition the arbiter would render entitlement to statehood an essentially subjective question, stripping international law of any unique role it might have in restraining the centrifugal forces of fragmentation. One might argue in response that, in the increasingly common case of collective recognition by international organizations, an element of objectivity would be retained.

<sup>2</sup> For a discussion of why third-party recognition of the states emerging from the former Soviet Union and Yugoslavia did not meaningfully advance an understanding of the right to self-determination, see Gregory H. Fox, *Self-Determination in the Post-Cold War Era: A New Internal Focus?*, 16 MICH. J. INT'L L. 733, 743-47 (1995).

Multilateral recognition would be more susceptible to evaluation based on concrete legal criteria than a disconnected series of bilateral recognitions would be. But given the International Court of Justice's ruling that UN membership cannot be based on criteria other than those set out in Article 4 of the Charter,<sup>3</sup> explicit non-recognition on the grounds that an applicant for membership was not a "people" entitled to self-determination (a separate question from whether it constituted a "state") would appear to be precluded. In addition, if recognition occurred after the point at which a secession was a *fait accompli*—that is, when a claimant became viable as an independent state—then the secession would only have been accomplished through exercise of the right to self-determination in a retroactive sense. While the claim was being actively resisted by the parent state, the international community would have provided no guidance on its legal validity. Such an exercise would have little precedential value.

Duursma next considers the criteria for statehood, a far more important question in recent years for the European microstates. She makes the interesting point (using Yugoslavia as an example) that the criterion of an effective government will be less likely to be fulfilled where a federal structure is involved, since cooperation between subunits is required. A contrast with Somalia, a nonfederal state, would have been interesting here, given that the country has been operating without an effective government since 1992 but is still regarded as a juridically viable state.

The most questionable element of statehood in the case of microstates has been political independence. All of the states Duursma examines have varying types of links to other states that arguably constrain their ability to act as full international sovereigns. Here, as with the boundaries of self-determination, recognition appears to hold the key. As noted, all of the microstates that have sought membership in the United Nations have been admitted. Does this suggest that conceptions of "independence" have changed since Liechtenstein's rejection by the League of Nations? Or are such substantive questions increasingly irrelevant, and are we witnessing the reemergence of some variation on the constitutive theory of statehood? Duursma points out that, given Article 103 of the UN

Charter, any constraints on microstate independence imposed by a bilateral treaty would, once the microstate became a UN member, yield in the event of conflict with Charter obligations.<sup>1</sup> While there is an element of bootstrapping in this reasoning (an applicant becomes a state eligible for UN membership by virtue of becoming a UN member), it does provide a practical answer to the problem of independence.

The largest portion of the book is taken up with examining the history, constitutional structures and international standing of the European microstates. As one might expect, there are many facets of these states' internal makeup that could provide fuel for suspicions about their true independence. Nationals of Monaco, Andorra and Vatican City, for example, are distinct minorities among the populations of their own countries. Monaco is bound by treaty obligation to accept a Minister of State, a Government Counselor and a variety of other civil servants who are French nationals, as well as to send its convicted criminals to French jails. Many of the judges in Liechtenstein are citizens of other states. The same questions arise for external relations. Each of the states has a treaty relationship with a larger neighbor that arguably restricts its discretion in conducting foreign relations. The 1918 treaty between France and Monaco, for example, obliges Monaco to exercise its sovereign rights "in perfect conformity with the political, military, naval and economic interests of France" (p. 275). Duursma methodically analyzes such treaty and statutory constraints and justifiably concludes that none is sufficiently burdensome to preclude eligibility for statehood. This conclusion is bolstered by the microstates' increasing participation in European institutions and other international organizations. A number of microstates have accepted the general jurisdiction of the International Court of Justice, and Liechtenstein is a member of the World Trade Organization.

At the conclusion of each case study, Duursma asks whether the criteria for self-determination have been met. While this link to the earlier section of the book is intriguing, the microstates' now-unquestioned status as independent states (with the exception of Vatican

<sup>3</sup> Admission of a State to the United Nations (Charter, Art. 4), 1948 ICJ R.F.P. 57 (Advisory Opinion of May 28)

<sup>1</sup> Article 103 of the UN Charter states: "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail."

City/Holy See) makes it unclear how this question could be answered other than in the affirmative. Is it possible that an established state might not enjoy the right to self-determination? If one takes an internal view of self-determination, as Duursma appears to do, then the "self" entitled to determine its future is the citizenry of a preexisting state. The question would therefore appear to answer itself. Perhaps Duursma has in mind here an external view of the right. In that case, one needs to ask whether there are circumstances in which a people might be entitled to self-determination even though they do not meet the requirements of statehood. Given that none of the standard requirements for statehood (population, borders, political independence) are necessary elements of a "people," the answer would appear to be yes. Perhaps eligibility for self-determination is a necessary, but not a sufficient, condition for statehood. And in view of Duursma's endorsement of the legitimizing function of third-state recognition, perhaps eligibility for statehood is only

a necessary, but not a sufficient, condition for actually achieving statehood. With the universal acceptance of the microstates on the one hand, and, on the other, the international community's reluctance to acknowledge rights of self-determination in struggles between national governments and groups seeking autonomy or outright independence, it is difficult to imagine where *opinio juris* might arise to help answer these questions.

Perhaps the most valuable aspect of the book is not its attempt to devise legal prerequisites to the achievement of independence but, rather, its description of how small communities can achieve stability once they have become independent. The European microstates provide a variety of models, though all are essentially pluralist democracies receiving substantial assistance from their larger and more powerful neighbors. It would be no small irony if communities long denied statehood by international law turned out to be models for the new international project of state building.

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