

## BOOK REVIEW

*ETHNICITY AND INTERNATIONAL LAW: HISTORIES, POLITICS AND PRACTICES* BY MOHAMMAD SHAHABUDDIN (CAMBRIDGE UNIVERSITY PRESS, 2016) 278 PAGES. PRICE USD110.00 (HARDCOVER) ISBN 9781107096790.

*Mohammad Shahabuddin's book is a comprehensive and much-needed historical study of the role of ethnicity in the making of international law. It calls for a heightened attention to a pair of opposites: the nineteenth-century Romantic idea of the nation-state as a living organism and the liberal tradition that rejected it in favour of a peculiar project of post-ethnic universalism, albeit with Europe as its omphalos. The book attends to the idea of ethnicity as it travels through the following historical incarnations: the nineteenth-century Romantic and liberal discourses on the 'self' and the 'other'; German and French colonialism; the inter-war minority protection regime; Cold War and post-Cold War international law; and, finally, contemporary international legal responses to so-called 'ethnic conflicts'. Walking along the thus-charted historical trajectory, this brief review interrogates the salience of the proposed analytical dichotomy between the Romantic and liberal traditions for our understanding of international law's consistently troubled relationship with ethnicity. At a certain point, an apparition joins the walk.*

'As for me, behold, my covenant *is* with thee, and thou shalt be a father of many nations'.<sup>1</sup> So solemnly promised the biblical God to Abram, who thus became the Prophet Abraham for his wife and progeny, and the progeny of their progeny, and those many generations thereafter who would consider this discursive genealogy to be the very foundation of their collective sense of self. And yet, as Mohammad Shahabuddin carefully reminds us in *Ethnicity and International Law*,<sup>2</sup> the Abrahamic promise contained both a path to radical inclusion, leading to the commonwealth 'of many nations' bound by a single monotheistic covenant, and one to radical exclusion, where the unbound rest of the humankind would be left to its own devices, and by that same token, often deemed worth little more than the non-human animal. This great divide implicit in the concept of 'chosen people(s)', or perhaps even the concept of 'people' itself, could also be described, in Shahabuddin's words, as 'the ethnic dichotomy of "self" and "other"'.<sup>3</sup> Although this thesis is hardly new or, for that matter, radical, it *is* extraordinarily revealing when applied to the disciplinary terroir of international law. Thus, *Ethnicity and International Law* is an important book of international legal theory, in that it summons the assorted histories of international law and their philosophical, social and political underpinnings to stand the judgment of a critique that is so carefully crafted that it is both subtle and deeply piercing. For Shahabuddin's is the art of storytelling that greatly exceeds the boundaries of the doctrinal in international legal scholarship while stopping short of explicitly disavowing it and the wisdom of recounting the historical dichotomy of what he terms as 'conservative' and 'liberal' traditions of ethnicity 'without siding with any particular school of thought'.<sup>4</sup> As a result, the

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<sup>1</sup> *Holy Bible* (King James Version) Genesis 17:4 (emphasis in original).

<sup>2</sup> Mohammad Shahabuddin, *Ethnicity and International Law: Histories, Politics and Practices* (Cambridge University Press, 2016).

<sup>3</sup> *Ibid* 3.

<sup>4</sup> *Ibid* 9.

book makes for a syncopated reading — it surprises, unnerves, comforts, saddens and cheers the reader in a highly unusual rhythm for a self-avowed legal study.

The entire edifice of *Ethnicity and International Law* rests on the idea that international law's present-day hesitancy to engage with 'all things ethnic' — whether the management of 'ethnic conflict' or the protection of 'ethnic minorities' — has its cause in 'the way international law developed along the lines of the nineteenth century's liberal and conservative traditions of understanding the salience of ethnicity in political-identity formation'.<sup>5</sup> The author locates these mutually competing traditions squarely into (Western) Europe, and describes them as Romanticism and the liberal response to it.<sup>6</sup> For Shahabuddin, the 'self-image' of a nation (or, to be precise, the German nation) that blossomed in nineteenth-century Romantic thought came to be ridiculed and ultimately rejected as backward in European liberal circles bent on the idea of (white, European) internationalism, and perhaps nowhere more so than in post-revolutionary France.<sup>7</sup> These disparate tendencies, and their interaction, greatly influenced international law's development. On the one hand, the idea of a sacrosanct and pure 'German race' led to an exceptionalist vision of the nation-state as a living organism that went at great pains to legally prevent 'mixing' with other 'races' and 'entities' — a trait that facilitated the rise of Nazism. Liberal European states, on the other hand, sought to underscore both the plurality and the (putative) common ancestry of the languages and peoples of Europe, albeit not without assuming their 'civilisational' superiority over the rest of the world's populace. In fact, as Shahabuddin demonstrates, both of these discourses were informed by social Darwinism — the former asserting that 'the survival of the fittest' rested upon guarding the 'Arian race' against any integration with the '*Untermensch*', and the latter promoting the idea of multiculturalism with Europe at the world's centre, as the pinnacle and sine qua non of human development.<sup>8</sup> This is particularly evident in the nature and operations of German and French colonial policies — one leading to the near-eradication of the colonised who were perceived as a threat to Germany's self-declared *Lebensraum* in South-West Africa and the other violently pursuing its *mission civilisatrice* at all costs, whether in Algeria or Cochinchina.

The critique of German and French colonialism is, in many ways, a tour de force of this book. Shahabuddin's authorial voice never falters in the passages recounting, for example, the Herero genocide between 1904 and 1907, which he rightly describes as 'the prelude to the Holocaust during World War II',<sup>9</sup> or when he writes about the atrocious 'human zoo' in Berlin, in which the Herero and Nama were exhibited to suggest 'a greater link between non-Western peoples and animals than between non-Western and Western peoples'.<sup>10</sup> His description of French attempts to 'appease' and depoliticise the colonised by

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<sup>5</sup> Ibid 2.

<sup>6</sup> See ibid 12.

<sup>7</sup> See ibid 30–7.

<sup>8</sup> Ibid 51, 60.

<sup>9</sup> Ibid 73.

<sup>10</sup> Elise von Joeden-Forgey, *Nobody's People: Colonial Subjects, Race Power and the German State, 1884–1945* (PhD thesis, University of Pennsylvania, 2004) 388, 393, quoted in Shahabuddin, above n 2, 80.

means of law, education and language is equally compelling. In brief, for Shahabuddin, German imperialism was a ‘force for elimination’, unlike the French and others, which had been a ‘force for assimilation’.<sup>11</sup> Both were the sides of the same coin of ethnicity — one conservative, the other liberal. International lawyers of the respective colonial powers played along, unable or unwilling to contradict these major mythopoetic formations in international relations.

With this conclusion, the book moves to the inter-war minority protection system, which Shahabuddin describes as a compromise between the liberal and conservative traditions, albeit one that ushered in the bias of the ‘conservative East’<sup>12</sup> — a region seemingly relying on the Romantic or quasi-Romantic vision of ethnicity in its political organisation that now included a welter of Eastern and Central European states. Under the new regime, selected ethnic minorities of *these* states, unlike their Western European counterparts, warranted special protection. While Shahabuddin is right to expose the fallacies of the minority protection system, of which perhaps the most striking is that ‘it actually avoided any general recognition of minority rights’,<sup>13</sup> his analysis would be much strengthened with a more robust attention to the ‘conservative East’s’ many internal inconsistencies and, indeed, ‘hybrid’ conceptualisations of ethnicity and nationhood. For example, the very existence of such a state as the Kingdom of Serbs, Croats and Slovenes in this period (later renamed the Kingdom of Yugoslavia) seems to be at odds with Shahabuddin’s vision of the Romantic nation-state formed *around*, if not quite exclusively *of*, a single ethnic group.

From this moment on, the spectre of the Balkans follows *Ethnicity and International Law* as a bad omen. The narrative moves to the Cold War couloirs of the United Nations, which Shahabuddin sees as being slowly but surely cleansed of all traces of the conservative tradition, with the liberal tradition now reigning supreme. This, he claims, is epitomised in the ascent of the international ‘human rights regime exclusively centred on the universal protection of individual rights’,<sup>14</sup> which replaced the minority protection system, as well as in the shift in global political power from Europe to the United States. The fact that both the so-called ‘Eastern bloc’ and a great deal of non-aligned countries served as ‘persistent objectors’ of sorts to this trend seems to be overlooked in the book. And so are, regretfully, the realities of ‘ethnically complex’ states, such as the Soviet Union and — yes, once again — Yugoslavia. That Soviet and Yugoslav international lawyers (and many others) recognised the need to move beyond the dichotomous concepts of ethnicity may have been an interesting episode in the larger story that *Ethnicity and International Law* tells so well, even though their efforts ultimately proved unsuccessful. Nonetheless, Shahabuddin certainly offers a rich and important account of Cold War international law, especially with regards to international case law on forceful individualisation of rights of members of ethnic (and other) minorities.

Inevitably, however, the Balkans make a comeback in the closing chapters of the book, when its narrative finally enters the post-Cold War timeframe. Out of

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<sup>11</sup> Shahabuddin, above n 2, 77.

<sup>12</sup> Ibid 100–11.

<sup>13</sup> Ibid 103.

<sup>14</sup> Ibid 138.

the pandemonium of international legal mechanisms unleashed onto this region, following the outbreak of what even Shahabuddin problematically terms as ‘ethnic violence’ with the collapse of Yugoslavia,<sup>15</sup> he chooses to centre his critique on the following sets of documents: the opinions, handed down between late 1991 and the middle of 1993, of the Arbitration Commission of the Conference on Yugoslavia (the Badinter Commission) and the *Dayton Peace Agreement* of 1995.<sup>16</sup> Focusing specifically on the war in Bosnia and Herzegovina (1992–1995), Shahabuddin argues that the Badinter Commission’s opinions were ‘initially phrased in liberal terms’, but that the international legal response later moved ‘towards a conservative approach’, best exemplified in the *Dayton Peace Agreement*.<sup>17</sup> Thus, for Shahabuddin, *Opinion No 1*<sup>18</sup> and *Opinion No 3*<sup>19</sup> of the Badinter Commission ‘reinforced the political organisation of Bosnia and Herzegovina under the [Socialist Federal Republic of Yugoslavia], in which the conservative notion of ethnicity had little relevance’,<sup>20</sup> while the *Dayton Peace Agreement* was a product of a more ‘pragmatic’ approach, which ‘reconciled the liberal and conservative traditions vis-à-vis the relevance of ethnicity in the political organisation of post-war Bosnia and Herzegovina’.<sup>21</sup> But it is precisely in such supposedly neat dichotomous positioning of these international legal documents that Shahabuddin’s analysis seems less convincing.

To account for the extraordinary ability of Socialist Yugoslavia to devise an ideology of ‘brotherhood and unity’ (*bratstvo i jedinstvo*) in which, as Shahabuddin argues, certain conservative notions of ethnicity mattered little, or at least less than in previous times, one would need to consult a variety of complex historical, political and legal factors, among which the centrality of Yugoslav socialist — as opposed to ‘just’ liberal — thought on the ‘ethnicity question’ would not be insignificant. This thought extended well into law, including international law. In a similar vein, it is questionable whether the *Dayton Peace Agreement*, and the apartheid-like political system of post-war Bosnia it helped build and maintain, seemingly *ad perpetuum*, can be described as anything other than an utterly conservative ethno-essentialist structure. Not only has this agreement denied any prospect of ethno-religious ‘hybridity’ — or mixture, syncretism and post-identitary politics — in post-war imaginings of *Bosnianness* (although such anathemas have, indeed, survived the great ethnocentric projects of the nineteenth and twentieth centuries); it has also been

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<sup>15</sup> Ibid 173.

<sup>16</sup> See *General Framework Agreement for Peace in Bosnia and Herzegovina*, 35 ILM 89 (signed and entered into force 14 December 1995).

<sup>17</sup> Ibid 180.

<sup>18</sup> *Yugoslavia Peace Conference Opinion No 1* (1991) 92 ILR 162, which declared that Socialist Federal Republic of Yugoslavia was in the process of dissolution.

<sup>19</sup> *Yugoslavia Peace Conference Opinion No 3* (1992) 92 ILR 170, which stated that, in the circumstances of the emergence of new independent states following the dissolution of Socialist Federal Republic of Yugoslavia, both the external and internal boundaries (that is, the boundaries between its former federative units) of the Socialist Federal Republic of Yugoslavia had to be respected.

<sup>20</sup> Shahabuddin, above n 2, 207.

<sup>21</sup> Ibid 209.

the basis for a systemic exclusion of ‘recognised’ ethnic groups, such as the Roma and Jews, from Bosnian political life.<sup>22</sup>

The spectre of the Balkans haunting Shahabuddin’s dichotomous view of the history of ethnicity in/and international law is, thus, primarily a creature of complexity, calling for more nuanced views of how ethnicity has been negotiated and understood in distinct philosophical and legal traditions of the world. The Balkans, in this sense, might not be a particularly idiosyncratic example, as the ‘hybridity’ and complexity of such terms-of-art as ‘Yugoslav’ or ‘Bosnian’ might very well be compared to those of ‘Indonesian’ and ‘Pakistani’. Mining these and many other aberrations to the nineteenth-century traditions of liberalism and conservatism for deeper, yet necessarily less standardisable, notions of ethnicity might be a better task for posterity than calling, as this book does, for a ‘subtle normative reconciliation’<sup>23</sup> between those two European traditions.

These are, however, minor objections, which pale in comparison with the book’s thick description — to use a Geertzian term<sup>24</sup> — of European Romanticism and liberalism in the long nineteenth century and their respective colonial projects. On the whole, *Ethnicity and International Law* is an important scholarly contribution to our understanding of the role ethnicity has played in the late modern history of international political, social and legal relations.

VANJA HAMZIĆ\*

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<sup>22</sup> For an example of the latter trend, see generally *Sejdić v Bosnia and Herzegovina* [2009] VI Eur Court HR 273.

<sup>23</sup> Shahabuddin, above n 2, 227.

<sup>24</sup> Clifford Geertz, *The Interpretation of Cultures: Selected Essays* (Basic Books, 1973) 5–6, 9–10.

\* Senior Lecturer in Legal History and Legal Anthropology, SOAS, University of London; Member, School of Social Science, Institute for Advanced Study, Princeton. I am grateful to Karen Engle for her very helpful comments and suggestions.