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Mohammad Shahabuddin

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ETHNICITY AND INTERNATIONAL LAW

Ethnicity and International Law presents a historical account of the impact of ethnicity on the making of international law. The development of international law since the nineteenth century is characterised by the inherent tension between the liberal and conservative traditions of dealing with what might be termed the 'problem' of ethnicity. The present-day hesitancy of liberal international law to engage with ethnicity in ethnic conflicts and ethnic minorities has its roots in these conflicting philosophical traditions. In international legal studies, both the relevance of ethnicity and the traditions of understanding it lie in this fact.

MOHAMMAD SHAHABUDDIN is a lecturer in law at Keele University, where his research focuses on the postcolonial critique of the concept of ethnicity and its role in the making of international law.

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For My Family

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FOREWORD

What we might term ‘ethnic conflict’ has been an enduring feature of human history. International law has responded to this phenomenon through a variety of means, and the ‘rights of minorities’ is a topic that has featured prominently in the discipline since perhaps the beginnings of modern sovereignty in the Peace of Westphalia. Scholars have written extensively on the issue and the related questions of self-determination, secession, autonomy, and now, the topic of remedial secession. It is in this context that Dr. Shahabuddin presents his own work on this classic theme. Remarkably, he succeeds in this book in presenting a fresh perspective on a problem that has been the subject of so much writing. This he achieves principally by reversing the traditional analytic framework which presents all the legal challenges associated with the management of ethnic conflict as a derivative, a by-product, of international law; Dr. Shahabuddin also argues – with a persuasiveness derived from deep research into history, political theory, and the history of international law – that ethnic conflict has shaped international law and, indeed, sovereignty itself as law attempts to account for its political and socio-logical origins. The ‘self–other’ distinction that is at the heart of ethnic conflict assumes a number of other forms and roles in international affairs, and these affect each other in complex ways.

The provocative argument Dr. Shahabuddin makes is that we might see international legal responses as playing out an ongoing and apparently insuperable tension between what he terms ‘liberal’ and ‘conservative’ views of ethnicity. Liberalism sees ethnicity as peripheral and undesirable and primitive, a feature of politics that must be discouraged and suppressed; the conservative approach rather sees ethnicity as a fundamental aspect of political identity and the nation that must be integrated into any political arrangement. Dr. Shahabuddin covers new and interesting ground in tracing the evolution of these traditions and, in particular, the relationship between their formation and the colonial policies of Germany and France. The book is notable for presenting a

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FOREWORD

rich account of the attempts of international law to deal with the challenge of the 'self' and 'other' through different phases and episodes in history and for offering a new genealogy of this theme, one that includes that colonial encounter as well as the more traditional story of the minority treaty system.

The questions raised by Dr. Shahabuddin's work are profound. The liberal approach may be inadequate as it continuously compromises to accommodate ethnic identities that it would rather not recognise, and yet, it is easy to imagine how the adoption of a 'conservative' approach to statehood could result in the subordination of minorities, inequalities, ethnic cleansing, and worse. His historical approach suggests we are condemned to repeating, albeit in some new guise, the same essential dynamic. If this is the case, his work could suggest two very different responses. If the project is to somehow resolve this tension, then we must develop another politics of 'self' and 'other' in order to erode the dichotomy at the heart of the problem? We might inquire into how other historical and political traditions approach the question of pluralism and the complexities of identity. Perhaps, however, this dichotomy is inescapable and inevitable because it is itself a product of modern sovereignty when applied to plural societies – in which case what is required is a radical re-thinking of sovereignty itself? Alternatively, we see the tension between the two traditions as productive, creating new ways of dealing with a complex and endlessly mutating phenomenon. After all, globalisation, rather than eroding these dichotomies, seems to have reproduced, transformed, and exacerbated them. Minorities are changing in their political and social character, and ethnic identifications persist. Some diaspora communities living in liberal democracies seem to be vehemently intent on asserting ethnic identities in the homelands they have left. Liberal democracies themselves are now struggling to maintain their identity and renunciation of ethnic politics as they are transformed by migration and refugees.

Dr. Shahabuddin has written a fine work that sheds important light on an issue that continues, despite its ancient lineage, to challenge the ambitions of contemporary international law.

Antony Anghie
Salt Lake City, November 2015

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ABBREVIATIONS

CDDH	Steering Committee for Human Rights, Council of Europe
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
COE	Council of Europe
CSCE	Conference on the Security and Co-operation in Europe
ECE	East and Central European
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECOSOC	Economic and Social Council
EU	European Union
FCNM	Framework Convention on National Minorities
FRUS	Foreign Relations of the United States
HCNM	High Commissioner on National Minorities
HR	Human Rights
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
IMF	International Monetary Fund
NATO	North Atlantic Treaty Organisation
NGO	Non-Governmental Organisation
OSCE	Organisation for Security and Co-operation in Europe
PCIJ	Permanent Court of International Justice
SDP	Social Democratic Party
SFRY	Socialist Federal Republic of Yugoslavia
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDM	United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organisation
WGM	Working Group on Minorities, United Nations

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