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Book review: Przemyslaw Tacik, *Deconstructing Self-Determination in International Law. Sovereignty, Exception, Biopolitics*, Brill, 2023

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Tacik's book is a perfect testimony to the fact that self-determination has not ceased to intrigue and inspire international legal and political scholarship.[1] Self-determination is not thus regarded as a one-off right which is exhausted with achieving independence and which should relieve scholars' attention given the almost completed decolonization process. Quite the contrary, self-determination has acquired new research dimensions through its connectivity with moral theories, liberal democracy, the principle of non-intervention, internal self-government (as a method of preventing secession), indigenous people, new social movements (ecological self-determination) etc.

[1] For classic compendia see A. Cassese, *Self-Determination of Peoples: A Legal Reappraisal*, Cambridge University Press 1995; D. Raič, *Statehood and the Law of Self-Determination,* Kluwer 2002; J. Fisch, *Das Selbstbestimmungsrecht der Völker Die Domestizierung Einer Illusion*, Beck 2010; V. Dimitrijević, *Savremeno shvatanje prava naroda na samoopredeljenje*, Belgrade Centre for Human Rights 2011; M. Perkowski, *Samostanowienie narodów w prawie międzynarodowym*, PWN 2001. For more current works consult: P. Hilpold (ed.), *Autonomy and Self-determination: Between Legal Assertions and Utopian Aspirations*, Elgar 2018; N. Shikova, *Self-Determination and Secession In Between the Law, Theory and Practice*, Springer 2023.

However, self-determination even in its orthodox sense (as the right to independence) has proven very contentious, hence debated. Doctrinal stances and institutional and state practice furnished multiple examples allowing for a different apprehension of the concept. In particular, for a long time it was not entirely clear whether self-determination was a principle or the right (which was ultimately resolved in favour of the latter). At the same time, it remains doubtful who is the rightsholder (whether the entire population of a state or minorities as well) and what should be the implications of the right (whether it could convey the right to secession). Finally, it remains controversial what the proper means of its implementation are and whether the right to self-determination (RSD) is an individual or a collective human right. Tacik in one of his former works acknowledged these complexities by aptly comparing the RSD with an 'indefinable entitlement of an elusive subject to rather unspecified actions'.[2] It is not without reason that self-determination is often characterized as *lex imperfecta*.[3]

In his new 502-page book 'Deconstructing Self-Determination in International Law. Sovereignty, Exception, Biopolitics', Tacik departs from the most popular, alas indeed somewhat futile endeavour of identifying the doctrinal pitfalls and taking a stance on the moral value of the RSD (whether it is a destructive or creative statehood device). Instead, the main task of the book is to outline the *problématique* of the functioning of the RSD, yet 'through and not despite' aporias, internal tensions and structural blockades (p. 2).

The book opens with a touching and timely dedication to the Ukrainian people whose right to self-determination was first breached by trials to impose a political direction and subsequently by the February 2022 military invasion. The book consists of five main chapters, in addition to an introduction and conclusion, which try to fill two acute needs in the otherwise rich legal literature on the right to self-determination. First, the book gives a re-evaluation of what this right means in the third decade of the 21st century, after Kosovo, Crimea and Catalonia – that is, after the corpus of self-determination law established during decolonisation proved manifestly inadequate to the praxis and reality of contemporary international relations. Second, the book provides a critical legal account of the RSD, rooted in critical legal theory and contemporary philosophy. The book adopts several critical perspectives on self-determination, most

[2] P. Tacik, *The Right of Peoples to Self-Determination: A European Rebound of a Neglected Paradox*, PWPM – Problemy Współczesnego Prawa Międzynarodowego, Europejskiego i Porównawczego, vol. XIX, 2021, p. 237.

[3] J.H.W. Verzijl, *International Law in Historical Perspective*, vol. 1, A.W. Sijthoff 1968, pp. 324–325; J. Klabbers, *The Right to Be Taken Seriously: Self-Determination in International Law*, Human Rights Quarterly, vol. 28, no. 1, 2006, p. 188.

importantly – deconstruction, Foucauldian biopolitics and the Agambenian theory of the state of exception, whereas it is the exceptional nature of the RSD that most prominently features in the book and underpins the author's reasoning.

The book's layout is also clear and proceeds in a logical way. In the first chapter, the author sets out the conceptual framework, explaining why self-determination needs a theory and what the benefits of seeing it through a critical studies lens are. In doing so, the author criticizes the most common doctrinal conceptual tools used to describe the RSD. By overviewing what David Kennedy dubbed 'recurring rhetorical structures',[4] Tacik identifies where crucial aporias of this right – discernible in structural blockades of the doctrine – are to be sought. Subsequently, the author reveals his main analytical tools which he intends to apply to particular aspects of the RSD in the remaining parts of the book. These are a) seeing the RSD as the state of exception in international law by recalling Agamben's theory and extrapolating it to the international dimension, b) viewing the RSD through the prism of two concepts: war and spirality and c) grasping the RSD through the readapted concept of biopolitics, as a field of relations within the triangle nation – sovereignty – international law.

The second chapter is focused on the history of the right to self-determination of peoples, but instead of a classic historical approach, it seeks a genealogy of the RSD. The author, contrary to other authors, applies the Foucauldian understanding in order to seek a narrative not dominated by the logic of origins and *telos* of the right to self-determination. The genealogy that the author developed has led him to draw three fundamental conclusions. First, there is no continuous history of the RSD; the RSD depends on the constellation of hegemonies in a given epoch, which in turn gave it a different meaning (ethnic in pre-WWII and territorial in post-WWII) (p. 158). What might be said to have lasted is exactly what is largely inapplicable, or as the author posits – exceptionally applicable, that is, the universality of the right. Consequently, one might agree with the pessimistic outlook of the author regarding any future congruent application of self-determination in its external fashion (p. 244). The recent examples of Kosovo, South Ossetia and Abkhazia illustrate that patently.

In the third chapter, Tacik wanders into the murkiest waters of the RSD debating the issues of addresses, the relationship of the RSD with the principle of *uti possidetis* (not territorial integrity) and its status. Although these are key issues and usually attract the utmost attention of scholars, Tacik devotes to them just around 50 pages (pp. 245–293). The author provides certain crucial approaches (and hindrances) in defining a nation and the people, placing a particular emphasis on the

[4] D. Kennedy, *International Legal Structures*, Baden-Baden: Nomos 1987, p. 7.

'self' (being both subjectively and externally validated), but concludes that there is no rule on what constitutes a subject of the RSD and that the 'subjects' will be created on the exception-based process, which is not necessarily fair (p. 254). By referring to *uti possidetis*, he bolsters his claim of the non-decisive role of the people, stating that the territories may 'embody' the subject, as was the case during the decolonization where many different nations were encapsulated in a state. Tacik refers to this as the 'biopolitical engulfing of a population into the grid of law' (p. 273). Still, one must agree with the author that *uti possidetis,* although in conflict with national self-determination, is not necessarily contradictory with the whole concept of the RSD, as without its 'technical' support many nations, in fact, could not be constituted at all. Regarding status, Tacik argues that self-determination, being as it is – exceptional in nature – is both a principle (a universal promise) and a right (a belief of proto-nations towards entitlement).

Chapter four is of no less interest to the reader as it is where the author indicates particular cases of exceptions on the basis of Giorgio Agamben's theory. The first illustrated by the author exception is entrenched in the division between internal self-determination (ISD) and external self-determination (ESD). It is argued that the 'auxiliary' ISD has supplanted the 'normal' ESD and is nowadays the preferred form of the exercise of the RSD. ESD, on the other hand, as pleaded in the *Kosovo* case, may be implemented only in extreme circumstances of disrespect of the ISD and other massive violations of human rights (pp. 297–299). As such, there exists no general right to secession (which the author links with the RSD), the normal 'bound' of entitlements exercised within the state (ISD) and the exceptional right in view of remedial secession (pp. 339–340). The last part of the chapter focuses on indigenous people, who are endowed with exceptional subjectivity – they form a borderline category between minorities and people *sensu stricto*. Their RSD is confirmed in legal documents (implicitly in the ILO Convention no. 169 and explicitly in the UNDRIP), but the implementation of their RSD leaves a lot to be desired.[5] The RSD of indigenous people is limited in practice to ISD due to territorial integrity guarantees (Article 4 and 46(1) UNDRIP) hence the author's reflections on the reductionist approach and his analysis of the remedial secession right of the indigenous people is very interesting (pp. 335–336).

The last substantive chapter of the monograph (Paradoxes of the Right of Nations to Self-Determination: A Critical Reappraisal) selects and addresses the key aporias of the right to self-determination of peoples (popular sovereignty vs. state

[5] See ILA, *Implementation of the Rights of Indigenous Peoples*, *Final Report (2020)*. Available at: https://www.ila-hq.org/en_GB/documents/ila-comm-impl-rights-ind-peoples-final-report-dec-13-2020 (accessed: 10.11.2023).

sovereignty, nationalism vs. international law, self-determination vs. the right to democratic governance) (pp. 371–430). In doctrinal works, they are often presented as unsolved questions pertaining to the RSD, yet only the deconstructive understanding of the aporia does justice to their construction. Consequently, this author discusses various binary oppositions organised around the concept of self-determination. Some of them are backed by ample doctrinal considerations (for example the opposition between the RSD and territorial integrity), whereas some have garnered less attention. In all of these cases, however, the right to self-determination is interpreted by the author with a view to grasping its inherent paradoxicality caused by the borderline position that it occupies in international law.

The author is to be commended for his meticulous study of the subject supported by a plethora of annotations and references in foreign languages as well as for the interdisciplinary approach visible in the thoroughgoing permeation of philosophical strands. In this vein, the author managed to combine a thorough international law study with a strong theoretical approach, much in line with the recent turn to theory in international law (exemplified by works of Ntina Tzouvala, Robert Knox, Ignacio de la Rasilla and Jean d'Aspremont). As such, the book reflects the new paradigm of interpreting the right of peoples to self-determination by building a bridge between international law scholarship and innovative trends in recent philosophy and sociology.

All in all, it must be said that Tacik has accomplished his aim to 'deconstruct' self-determination very well and all academics in the field are encouraged to consult this oeuvre. Moreover, the book will interest practitioners of international law (lawyers, judges, diplomats) seeking comprehensive doctrinal and theoretical accounts of the right to self-determination, particularly in our times, when populist discourses reinvigorate and abuse self-determination for their political purposes. In this sense, Tacik's work bears strong traits not only in terms of originality but also timeliness.