

Peter Van Elsuwege. ***From Soviet Republics to EU Member States.***

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There is indeed an extremely long way from Soviet Republics to EU Member States. Although fitting into one and a half decades, the complexity of this transformation is truly stunning and concerns all spheres of life of the Baltic States.

Van Elsuwege's monograph, based on his doctoral thesis defended at the Faculty of Law of Ghent University, provides a truly unique account of this transformation and is absolutely unrivalled in its scope and ambition. This multi-faceted book is indispensable for the understanding of the recent legal and political developments in the Republics of Estonia, Latvia, and Lithuania and provides insightful analysis of the issues as diverse as the regulation of EU enlargement, post-Communist democratization, minority protection, state continuity in international law, and EU–Russian relations – among numerous others.

The book starts with a discussion of the issue of the first Baltic independence in the context of international law. The account provided by Van Elsuwege is extremely fascinating and fresh: from the repudiation of the Brest-Litovsk Treaty by Soviet Russia upon the end of World War I to Article 433 of the Treaty of Versailles demanding that defeated Germany keep troops in the 'Baltic Provinces' to fight the Communist threat (at 16) to form what in Clemenceau's words would be a *cordon sanitaire* between Germany and Russia (at 18). The detailed analysis of international law and practice in the field of the continuation of states is overwhelmingly relevant and clear (at 59). In particular the ability to apply the principle of *ex factis jus oritur* is intriguing in this context. The continuity argument is nuanced and, ultimately, convincing. However, resulting in inhumane consequences of mass statelessness

and the humiliation of minorities who have no other home but the states of Latvia and Estonia, the continuity argument is bound to be criticized, once applied to the inhabitants of these two Baltic States. Indeed, 'the concept of state continuity has been abused to sacrifice human dignity at the altar of state rights' (at 80). There are still 400,000 stateless persons belonging to minorities in Latvia and 100,000 in Estonia (at 296, note 402).

The strongest point of the book under review is a critical yet balanced approach espoused by the author. The whole history of the Baltic States is often presented in diametrically opposed ways, depending on the political views of the commentators. Such one-sided positions not only deny the complexity of the history of the region, but also corrupt the analysis of the legal and political issues involved. So the official Russian accounts of developments in these countries have very little in common with the state-approved narratives devised by these states.

The Baltic States are currently in the middle of inventing their past, which, as in the case of any other of Anderson's imagined community<sup>1</sup> often involves restrictive construction of the *Volk* and a steep rise in petty nationalism, which is state-sanctioned and presented as a norm. When you are checking into a hotel in Latvia, get ready to fill in a form with your 'citizenship' as well as 'ethnicity'. This is one of the few places in Europe where a question 'why do you need this information?' would seem surprising: this is better to register you in the system, of course!

The story of the rise in ethnic nationalism accompanying state formation is nothing new. More than 100 years ago in his brilliant *Qu'est-ce qu'une nation?* Ernst Renan explained that '*T'oublie, et . . . l'erreur historique, sont un facteur essentiel de la création d'une nation*'.<sup>2</sup>

<sup>1</sup> B. Anderson, *Imagined Communities* (2nd edn, 2006).

<sup>2</sup> E. Renan, *Qu'est-ce qu'une nation?* (1992 edn), at 41.

What was true for France and Germany at the time is certainly applicable to the Baltic States today. In this sense the official statements of the Russian Ministry of Foreign Affairs concerning the occupation of these countries (or the lack of it) and the story of occupation retold in the pamphlets financed by the Baltic States themselves, to say nothing of the emerging museums introducing the locals and occasional tourists to the new past, are nothing but different sides of the same coin. Although seemingly opposed to each other, both are equally corrupt in the stories they do not tell. Mass murders of Jews between the Russian withdrawal and the coming of the Germans is one of those stories (recently retold by Geert Mak<sup>3</sup>), the narratives of Baltic citizens who believed in the Communist ideals and actively participated in making Soviet Republics out of independent authoritarian (at 26) states. The same is true of the story of the Baltic partisan movement, whose 'collaboration [with Hitler] particularly affected the fate of the Baltic Jewish communities, which were threatened with extermination' (at 32).

The occupation museum in Riga is the best illustration of the absurdity of the state-mandated views of history. The creators of the national narratives do not allow for difficulties or ambiguities in the past. 'They like us more than they like you, Russians', my German colleague summarized a recent visit. At least we were not asked to pay any entry fees. . .

The consequence of turning one's back on moderate and balanced approaches to history, besides the naïvely expected moulding of nations, modern in the 19th-century sense, results in totally ignoring the troubles faced by the people who lived through the reality which underlies innumerable invented pasts. The new nationalist narratives give little consolation to the numerous families with one son drafted into the SS and another into the Soviet army. Van Elsuwege's account does not name traitors and liberators; it sticks to the facts and describes the legal and politi-

cal transformation without ignoring the suffering of those people who lost their 'right to have rights' in the course of the reinvention of Latvia and Estonia, both countries disproving the Soviet-inspired thesis of one of Bulgakov's characters that 'a man without a passport is not permitted to exist'. There is a huge difference, however, between being permitted to exist and being a citizen of your native community.

The fate of the mostly Russian-speaking minorities of Latvia and Estonia is one of the main themes of the book. While these people played an important role in the fight for the independence of the two countries (at 49), they soon found out that they were not welcome because of their language and ethnicity. The story of these people, masterfully addressed by Van Elsuwege through the lens of politics and law, is one of the illustrations of a larger-scale 'failure of conditionality',<sup>4</sup> which preceded the joining of Estonia and Latvia to the European Union and can only be rivalled by similarly disgraceful developments in Slovenia.<sup>5</sup> It is indeed stunning that stateless Russian minorities were only seriously noticed in the pre-accession context when the number of European Parliament seats to be assigned to each country was discussed, resulting in better representation of the countries which gave the Russian minorities neither political rights, nor citizenship (at 296, note 402). Van Elsuwege's is a very balanced account of the problem of statelessness plaguing the region, finding political explanations of the current situation and analysing the roles of all the main actors involved, including the EU, NATO, and the Russian Federation, all acting on their own agendas and in fact caring little about solving the outstanding problems of hundreds of thousands of people left without a nationality and without a voice in politics.

<sup>4</sup> D. Kochenov, *EU Enlargement and the Failure of Conditionality* (2008).

<sup>5</sup> J. Shaw, *The Transformation of Citizenship in the European Union* (2007), at 343.

<sup>3</sup> G. Mak, *In Europa* (2004).

Besides the obvious problems brought by statelessness, minorities are hit by so-called 'language laws', as the states prescribe for citizens and non-citizens in which languages to communicate (and to think?). Special language inspectors are given powers to 'test' linguistic knowledge *à l'improviste*, recommending the firing of those found 'unworthy' and not letting them stand for elections, even if they are citizens (at 424). The story of such language inspections retold by Van Elsuwege reads as an absurd invention of an Orwellian mind, yet, it is day-to-day reality in one tiny corner of the contemporary European Union.

The book starts with a brief account of the history of the three states concerned which demonstrates with clarity that all of them have always been at the forefront of intercultural dialogue, never monolingual, monocultural societies. But this is the real past, not the newly-approved past of the occupation museums.

Besides minority protection, the book addresses the whole spectrum of issues marking the Baltic States' transformation which are rightfully assessed in a much more positive light. These include, but are not limited to, these countries' relations with the EU, the story of the negotiations regarding the Kaliningrad transit (at 340), border demarcation with Russia, and chapter by chapter assessment of the accession negotiations. The last is extremely rich and useful: recognition of Soviet diplomas (at 319), taxation (at 325), energy policy, free movement of persons, etc. – the width of analysis is truly remarkable.

In the context of EU–Baltic relations we are given a full account of legal and political engagement between them, involving thorough assessment of all the relevant agreements and virtually all the main points of concern, which ultimately turns into a wonderfully presented story of the development of EU enlargement law which uses the Baltic States as a case study. From the requirement of approximation of laws with the spirit and the letter of the *acquis communautaire* (at 170) to the constitutional legal

adaptations, the tale behind the referenda to legitimize EU membership (at 371), and the ambiguity of the legal basis authorizing the Commission to sit in the Council of Baltic Sea States (at 178), the story Van Elsuwege tells is always insightful, thoughtful, and convincing.

Ironically, as is proven by the book under review, all the Baltic States favoured differentiation in the context of their relations with the EU. The reasons for this are curious: Lithuania wanted to be treated differently from Latvia and Estonia because of their notorious human rights records, including the deprivation of citizenship of hundreds of thousands of permanent residents; while Estonia wanted to be treated separately as the most economically successful state of the three (at 232). Yet, they were not only treated as a block by the Commission, but also had to establish cooperation between themselves, which later caused some problems in the context of differentiation (at 314). Complaints that the principle of differentiation proclaimed by the Commission remained non-operational in practice were numerous, coming from politicians and negotiators alike (at 322).

Now it is clear that Lithuania was afraid of being coupled with two other Baltic States for nothing: minority rights and human rights protection concerns did not play an important role in pre-accession, as the very conditionality framework proved generally fragile and totally dysfunctional outside the areas directly covered by the *acquis*.<sup>6</sup> Faced with the most appalling practices, the Commission would not criticize anything, debating the 'resources available for Russian speakers to learn Estonian in order to sit in the naturalization test' (at 241) instead of questioning the grounds for naturalization, as it did in the case of the Czech Roma for instance. Unlike numerous other commentators, Van Elsuwege does not shy away from criticizing the conduct of the pre-accession assessment of the Baltic States (e.g., at 269, 270), raising 'questions as to the

<sup>6</sup> Kochenov, *supra* note 4.

adequacy of the Commission's assessments' (at 271).

The ambition of the author is reflected in the number of pages: as they run to more than 600, this is not the thinnest book on one's shelf. While the size of the book, which exists only in a hardback two-volume edition, certainly reduces the number of potential buyers, it is not the author's fault that the publisher chose such an inaccessible format for this important monograph. The weakest point of the study consists in ignoring all the original Latvian, Lithuanian, Estonian, and Russian language sources. While mastering four languages can be difficult, learning one or two is not impossible when one embarks on a majestic project like the book under review.

All in all, however, the book is a success: balanced, informative, and convincing, it is a must for all those interested in the regulation of EU enlargements, EU–Russian relations, and, most obviously, in the recent legal history of the three Baltic States.

P.S. In a letter to Miłosz, Tomas Venclova, a great Lithuanian poet, stated that 'the whole value of world culture is in its variety of traditions and languages, but when language and ancestry become a fetish for salvation at the moment of slaughter, then I prefer to be one of the slaughtered'.<sup>7</sup> Accession to the EU and NATO seems to have marked a definitive end of the 'slaughter times' for the Baltic States, yet the fetish remains.

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