

The 'Taiwan of the Balkans'? The *De Facto* State Option for Kosova

SCOTT PEGG*
Bilkent University

I. Introduction

This article is not concerned with providing an up to the minute account of day-to-day developments in Kosova. Rather, its focus is on viewing Kosova's current uncertain juridical status academically in theoretical and comparative terms. In other words, following James Rosenau and Mary Durfee (2000: 232) this article accepts that "to think theoretically one must be ready to appreciate and accept the need to sacrifice detailed descriptions for broad observations." In that sense, the theoretical arguments presented here are not affected substantively one way or the other by the recent electoral victories of Vojislav Kostunica in rump Yugoslavia or Ibrahim Rugova in Kosova. In contrast to much of the current writing on Kosova, this article also refuses to treat Kosova as unique or *sui generis*. Instead, it examines Kosova comparatively along with other entities with uncertain international legal status such as the Republic of Somaliland, Taiwan and the Turkish Republic of Northern Cyprus (TRNC). Our hope is that such a comparative examination can shed interesting and new light on the situation in Kosova. In this regard, we again follow Rosenau and Durfee (2000: 230) who argue that "to think theoretically one must be predisposed to ask about every event, every situation, or every observed phenomenon, 'Of what is it an instance?'" In this specific case, our concern is with whether or not Kosova is or is in the process of becoming an instance of what I have elsewhere called the "*de facto* state" (Pegg, 1998).

To answer this question, we must begin with the decolonization process after World War II. If one takes 1960 as a convenient shorthand date for the ending of the vast majority of the decolonization process, then it can be argued that the three decades which followed that year were characterized by the greatest level of territorial stability ever seen in the history of international relations. The delegitimization of territorial aggrandizement and the almost religious sanctity placed on existing borders marks a profound change in international relations. Once acquired, sovereign statehood has become almost impossible to lose. Small and/or weak states which, in earlier eras, would have been carved up, colonized, or swallowed by larger powers, now have a guaranteed juridical existence in international society.

The result is an international system characterized by large numbers of what Robert Jackson (1990) terms "quasi-states": states which are internationally recognized as full juridical equals, possessing the same rights and privileges as any other state, yet which manifestly lack all but the most rudimentary empirical capabilities. The quasi-state is generally incapable of delivering services to its population and the scope of its governance often does not extend beyond the capital city, if even there.

* Scott Pegg is an Assistant Professor in the Department of International Relations at Bilkent University in Ankara, Turkey. He can be reached via e-mail at scott@bilkent.edu.tr. This article draws from the author's book *International Society and the De Facto State*. Dr. Pegg would like to thank Altin Ilirjani for inviting him to present this research in July 2000 as a public lecture to the Albanian Political Science Association in Tirana.

The same normative logic in international society that serves to support existing quasi-states also denies the legitimacy of any would-be challengers regardless of how legitimate their grievances, how broad their popular support, or how effective their governance. It thus facilitates the creation of something that is more or less the inverse of the quasi-state: what I call the *de facto* state. In essence, a *de facto* state exists where there is an organized political leadership which has risen to power through some degree of indigenous capability; receives popular support; and has achieved sufficient capacity to provide governmental services to a given population in a defined territorial area, over which effective control is maintained for an extended period of time. The *de facto* state views itself as capable of entering into relations with other states and it seeks full constitutional independence and widespread international recognition as a sovereign state. It is, however, unable to achieve any degree of substantive recognition and therefore remains illegitimate in the eyes of international society (Pegg, 1998: 26).

Whereas the quasi-state has recognized territorial borders and the ability to participate in intergovernmental organizations, in many cases it does not effectively control large swathes of its own countryside. Though it seeks recognition, the *de facto* state, on the other hand, has been denied its seat at the UN and its place at the international table. No matter how long or how effective its territorial control of a given area has been, that control is neither recognized nor is it considered legitimate. The quasi-state is legitimate no matter how ineffective it is. Conversely, the *de facto* state is illegitimate no matter how effective it is.

At various points in time, examples of *de facto* states might include Biafra; Rhodesia after its unilateral declaration of independence; Charles Taylor's "Greater Liberia"; Eritrea before it won its independence from Ethiopia; the Republic of Somaliland; the Karen and Shan states of Burma; Taiwan; Tamil Eelam; Chechnya; Krajina; the Bosnian Serb Republic and the TRNC. Conceivably, Kosova at various points before the NATO intervention could be included in this list and it might also evolve in this direction after the intervention is over. Arguably, Kosova, along with other non-sovereign or questionably-sovereign entities like the Palestinian Authority and the Kurdish safe havens, now has a higher standing and greater degree of legitimacy in international society than most *de facto* states like Somaliland or the TRNC (Pegg, 1998: 37-39). Still, considering the present degree of uncertainty over Kosova's future, a comparative examination with other *de facto* states such as Eritrea before it won its independence from Ethiopia, the Republic of Somaliland, Taiwan and the TRNC is relevant as it might yield valuable lessons for Kosova's future status and how it conducts its foreign relations within that status.

The remainder of this paper comprises three main sections. We first consider the question of how international society has traditionally chosen to deal with *de facto* states. The next section specifically evaluates the relevance of the Taiwan model for Kosova. The article then addresses the question of whether or not the *de facto* state is a useful entity for international society. It concludes by arguing that while the widespread juridical recognition of sovereignty, defined in Alan James's (1986) terms as constitutional independence, obviously remains the ultimate goal for the vast majority of the Kosovar Albanian population, *de facto* statehood is far from the worst option available to Kosova.

II. How Does International Society Deal With the *De Facto* State?

Within the general context of its strong diplomatic and financial support for all existing sovereign states, international society has traditionally chosen to respond to the existence of *de facto* states in three main ways: actively opposing them through the use of embargoes and sanctions; generally ignoring them; and coming to some sort of limited acceptance and acknowledgment of their presence (Pegg, 1998: 177-181). Each of these three approaches has a different set of costs and benefits for the international community and for the *de facto* state itself.

The classic example of actively opposing the *de facto* state's existence through the use of international embargoes and sanctions comes from Northern Cyprus. The Greek Cypriot embargo campaign against the TRNC has been quite successful. A variety of international organizations including the Universal Postal Union, the International Civil Aviation Organization, and the International Air Transport Association have refused to recognize or deal with the Turkish Cypriots in their respective areas of competence. As such, Ercan airport is not recognized "as it operates unofficially and poses safety hazards" and TRNC postage stamps were proclaimed "illegal and of no validity." The international embargo against Northern Cyprus was tightened in 1994 when the European Court of Justice (ECJ), the judicial wing of the European Union (EU), ruled that EU member-states could no longer accept movement and phyto-sanitary certificates from TRNC authorities. Movement certificates establish a good's place of origin. Phyto-sanitary certificates guarantee plant or produce health. Under the 1972 association agreement between Cyprus and the then European Community (EC), Cypriot goods received preferential access to the EC marketplace. Until this 1994 ruling, the UK had been accepting certificates from TRNC authorities to ensure that the entire population of Cyprus benefited from the association agreement. In essence, the ECJ ruling held that movement and phyto-sanitary certificates could only be issued by authorities from the Republic of Cyprus. Produce and citrus exports from the TRNC are now banned from EU markets, although in practice many of them are being rerouted through Turkey.

The international embargo campaign has hurt the TRNC economy. The fact that no country other than Turkey maintains direct air links with the TRNC substantially increases both the costs and the inconvenience of traveling to Northern Cyprus and is a serious impediment to the development of the tourist industry there. The impact of this measure alone on the TRNC's fragile economy is enormous. The overall effects of the embargo also show up in per capita income statistics. Depending on whose figures you use, Greek Cypriot per capita income is somewhere between three to four times higher than Turkish Cypriot per capita income.

The isolate and embargo strategy obviously has substantial costs for the *de facto* state. It also, however, affects international society. Sticking with the TRNC example, in May 1993, Asil Nadir, the former head of Polly Peck International, fled from London to the TRNC in order to avoid serious fraud charges in the UK. Because the UK does not recognize the TRNC, there is no extradition treaty between them. As such, Nadir is effectively beyond the reach of British justice in the TRNC.

Far more typical than deliberate and active campaigns against the *de facto* state is the second option of generally ignoring their existence and refusing to engage them in any manner. An example here is the Organization of African Unity's (OAU) refusal to allow the Provisional Government of Eritrea (PGE) observer status at its June 1992 summit meeting in Dakar, Senegal. The OAU did not call for actions to be taken against the PGE; it merely refused to grant it any status at its own deliberations. More costly to the *de facto* state is the general inability of most intergovernmental organizations and non-governmental aid agencies to deal with non-sovereign entities. As Alan James (1986: 276) points out, it "deserves emphasis that the acquisition of sovereign status does, in itself, constitute a material, and not just a nominal, change in a territory's position. For this alteration in its status is not simply a matter of words but has some practical implications, which can be of considerable significance." Eritrea, for example, was unable to qualify for any bilateral aid or loans from the IMF or the World Bank until after the conclusion of its independence referendum. The Republic of Somaliland has also complained bitterly about the UN's refusal to assist it in rebuilding its legal infrastructure due to fears that this might somehow imply sovereign recognition of Somaliland.

Another revealing example here comes from Chechnya. After the first Chechen war, in February 1996, the IMF negotiated a US\$ 10.1 billion three-year loan agreement with the government of Russia. As it does not appear as an identifiable item in Russia's budget, the costs

of the war in Chechnya were not an issue between Russia and the IMF. Yet, under IMF pressure, the Russian government announced a series of spending cutbacks which included money earmarked for the rebuilding of Chechnya's devastated infrastructure. As *The Economist* put it, "The perverse result is to leave the Russian government acknowledging a need to cut back on the cost of reconstructing Chechnya, but not on the cost of destroying it first."¹

For the *de facto* state, the costs of this second option are measured primarily in terms of potential aid and investment dollars lost. Unfortunately, for some extremely poor *de facto* states with slim margins of error such as Somaliland, these short run costs may make the difference between long run survival or not. For international society as a whole, however, the costs of this second option are only felt in the long run. After all, it costs nothing to ignore or neglect a *de facto* state today. If, however, to take one example, external assistance to develop Somaliland's legal infrastructure will show a positive long-term return on investment in terms of improved local (and hence regional) stability, then the short-term savings of doing nothing may be overwhelmed by the increased costs of future long-term instability. Similarly, not taking Chechnya into its calculations may even benefit the IMF in terms of its short-term loan repayments schedule. One might suspect, however, that such neglect will come back to haunt international society in the not-too-distant future.

The third major option for international society in regard to *de facto* states is what might be termed the limited acceptance approach. This option is best exemplified by the international community's attitudes toward Eritrea in its 1991 - 1993 period and by its most recent attitudes toward Somaliland. Though it was denied access to international organizations and many forms of external assistance, the UN did open a permanent representative's office in Eritrea in November 1991. In February 1992, a US Agency for International Development (USAID) delegation visited Eritrea and held discussions with senior PGE officials. The PGE in some ways made their own situation more difficult by steadfastly refusing to deal with the outside world through the Ethiopian capital of Addis Ababa. They refused to receive officials from embassies in Addis Ababa and would not consent to their aid needs being considered as part of an Ethiopian country program. Still, Lionel Cliffe (1994: 63) maintains that by 1992 "most governments had adjusted to the realities of Eritrea's *de facto* separation and to the inevitability of its eventual independence: external communications and most diplomatic relations had been normalized, and long-term aid was in the planning stage." In the case of Somaliland, the evidence is somewhat more tentative. The US sent a fact-finding mission to Hargeisa in 1995 and the United Nations Development Program (UNDP) now maintains a representative office there. In June 1995, the UNDP representative told the Somaliland government that UN agencies were prepared to work with it and that the government had the right to be informed about the budgets and projects of every agency. The US now deals with Somaliland through the American embassy in Djibouti and, for aid projects, through the USAID office in Nairobi.

Another example of the limited acceptance approach comes from the TRNC. In this case, though most countries support the isolate and embargo strategy, they realize that there can be no overall settlement of the Cyprus problem without the Turkish Cypriots. For this reason, the TRNC is allowed to maintain non-diplomatic representative offices in such cities as Brussels, London, Washington, New York, Islamabad, and Abu Dhabi. The UN's recognition of the two Cypriot communities participating in negotiations on an "equal footing" also allows TRNC officials to have full, albeit non-diplomatic, access to the UN.

Obviously, of the three choices presented above, this last option is the one that is most advantageous to the *de facto* state. While it might not contribute to success toward the ultimate goal of sovereignty as constitutional independence, this type of limited acceptance coupled with the provision of humanitarian assistance can potentially ease a number of pressing problems

¹ "Russia's Budget: Another Battle to Fight," *The Economist*, 24 August 1996.

facing the *de facto* state. For international society, the greatest potential cost to this approach is angering the sovereign state on whose territory the *de facto* leadership operates. There is also the potential problem of not wanting to be seen to be encouraging these types of rebellions in the future. Indeed, the members of international society may fear that even such a non-judicial accommodation of the *de facto* state will only serve to undermine their normative position against secession. In the short-term, the costs of this approach (in terms of aid expenditures and diplomatic time) will probably exceed those of doing nothing. In the long-term, international society must hope that the investment in dealing with pressing humanitarian problems today will reap dividends tomorrow in terms of improved stability and less threatened or isolated political leaderships.

III. The Taiwan Alternative

The substantial prestige and resources already invested in Kosova by the western countries have given it a standing in international society that other *de facto* states like the Republic of Somaliland or the TRNC can only dream about. In that sense, a more relevant comparison for Kosova might be Taiwan. As relations between Taiwan and the 29 countries which recognize it are conducted along standard diplomatic lines, our focus here is on what the Taiwanese term “substantive relations”—the economic, trade, technological and cultural ties that Taiwan maintains with countries that do not have formal diplomatic relations with it. In essence, what I have called “the Taiwan model” can be summarized in three main areas: 1) Taiwanese pragmatism, particularly in regard to nomenclature; 2) active cooperation from states that do not recognize Taiwan; and 3) the “privatization” of official relations (Pegg, 1998: 183-87).

The first component of this model is a flexible pragmatism on the part of the Taiwanese in regard to nomenclature. Taiwan’s official name is the Republic of China (ROC). After the US switched recognition from Taipei to Beijing in 1979, however, the Beijing leadership formulated a policy that any Taiwanese presence in international affairs, be it official or unofficial, should be in the name of “Taiwan, China” or “Taipei, China” so that no one would be confused as to the existence of “two Chinas” or “one China, one Taiwan.” The name “Taipei, China” is sometimes referred to as the “Olympic formula” since it was first adopted by the International Olympic Committee in 1979. After some initial resistance to the use of this formula, Taiwan accepted it in 1981. This name is also now used by the Asian Development Bank (ADB). In February 1986, the board of governors of the ADB (of which Taiwan was a founding member under the name Republic of China) admitted the People’s Republic of China (PRC) as a member and voted to change Taiwan’s designation from ROC to “Taipei, China.” The Taiwanese boycotted the ADB’s annual meetings in 1986 and 1987 in protest, but retained their membership and returned to full cooperation with the organization in 1988.

The ADB was the first intergovernmental organization in which Taiwan and the PRC have both participated in as equal members. The Asia-Pacific Economic Cooperation (APEC) became the second such organization in 1991 when it simultaneously admitted Hong Kong, the PRC, and “Chinese Taipei” to its membership. In 1990, Taiwan formally applied to join the General Agreement on Tariffs and Trade (GATT) as “The Separate Customs Territory of Taiwan, P’enghu, Kinmen and Matsu” under Article XXXIII of the General Agreement. As Ya Qin (1992: 1073) notes, this name was chosen in the hopes “that by using the term ‘customs territory,’ the application would meet with fewer ‘unnecessary disturbances.’” Though Taiwan has yet to be successful in its quest for GATT and now World Trade Organization (WTO) membership, its flexibility in nomenclature certainly eases its participation in international relations.

The second component of the Taiwan model is the active cooperation of its non-diplomatic partners. This cooperation has been most apparent in the case of the United States. In an attempt to minimize the consequences of derecognition, the US Congress passed the Taiwan

Relations Act (TRA). Except for the use of diplomatic license plates and passports, under this act the US extends essentially the same privileges to Taiwanese representatives as it does to diplomats from officially recognized states. The TRA also provides for the capacity of Taiwan to sue and be sued in US courts. Typically, only a recognized government would have the capacity to sue in the courts of another state. Similarly, the act provides that the absence of diplomatic relations shall not affect the application of any US laws with respect to Taiwan and that US laws shall apply to Taiwan exactly as they did prior to derecognition on 1 January 1979. As President Carter explained in an official memorandum, "Whenever any law, regulation, or order of the United States refers to a foreign country, nation, state, government, or similar entity, departments and agencies shall construe those terms and apply those laws, regulations or orders to include Taiwan" (Li, 1979; Ling, 1983; Mangelson, 1992; Randolph, 1981; Sheikh, 1980).

The final component of the Taiwan model is the "privatization" of official relations. In the case of the US, the TRA provided for the establishment of a new body called the American Institute in Taiwan (AIT) to handle relations in the absence of diplomatic recognition. The AIT is a private non-profit corporation which has entered into a contract with the US State Department to provide certain services in return for the reimbursement of its costs within defined limits. In theory, all AIT personnel are not government employees during the course of their tenure—even though many of them are seconded from the State Department and other governmental agencies. Section 7 of the TRA authorizes AIT employees to perform the functions and services of US consular officials and, in practice, the AIT performs most of the same functions which were previously carried out by the US Embassy in Taipei. The Taiwanese equivalent of the AIT was formerly called the Coordination Council for North American Affairs (CCNAA) and is now called the Taipei Economic and Cultural Representative Office (TECRO). Under the TRA, all dealings between Taiwan and the US are to be handled exclusively through these two bodies. Therefore, should the US Department of Agriculture wish to liaison with its counterparts in Taiwan for some reason, it cannot make direct contact as it could with, say, similar officials in Argentina. Rather, it must transmit its request through the AIT-TECRO framework (Ling, 1983: 173-74; Randolph, 1981: 251-53; Sheikh, 1980: 339). R. Sean Randolph (1981: 251) concludes that "unique in both form and function, the AIT is without precedent in United States diplomatic experience." One can perhaps see a model here for how countries like the US might deal with Kosova in the future as long as its sovereign status remained unclear or disputed.

In addition to the AIT-TECRO framework, the Taiwanese have also worked out similar "non-governmental" arrangements with the PRC. The Taiwanese equivalent of the TECRO is in this case called the Straits Exchange Foundation (SEF). The SEF was set up in 1991 because commercial contacts with the PRC had reached such a level that some type of regular forum was needed to handle such issues as fishing disputes, investment protection matters, litigation questions, and illegal PRC emigrants to Taiwan. The PRC's equivalent body to the SEF is called the Association for Relations Across the Taiwan Straits. In the Straits Exchange Foundation and the Association for Relations Across the Taiwan Straits, one can perhaps see a model of how relations could be conducted with rump Yugoslavia until Kosova's own status was more secure juridically.

Whatever else one may say about it, this "privatization" of official relations has certainly not appreciably hindered economic contacts between the parties concerned. In the case of the US, since the enactment of the TRA, two-way trade between the US and Taiwan has increased from US\$ 9 billion a year in 1979 to over US\$ 54 billion in 1999. Taiwan is now the US's seventh largest trading partner and its eighth largest export market.² As for the PRC, Taiwan is now the second largest foreign investor in that country. According to the PRC's own statistics, some 20,000 Taiwanese companies had invested or were committed to invest US\$ 22.6 billion in

² See http://www.state.gov/www/background_notes/taiwan_0010_bgn.html for more detail.

China by 1995. In 1994, two-way trade between Taiwan and the PRC was in excess of US\$ 14 billion.³ Taiwan is now the world's fifteenth largest trading country and its eighteenth largest economy.

At first glance, the Taiwan model would appear to be quite attractive to other *de facto* states. There is one major drawback, however. Most *de facto* states would probably be unwilling to show the same type of flexible pragmatism in terms of nomenclature that the Taiwanese have. Turkish Cypriots, for example, have often accused Greek Cypriots of blocking mutually beneficial joint economic projects over questions of recognition. The Greek Cypriots reply that the Turkish Cypriots use the bait of joint economic projects as part of a deliberate strategy to achieve *de facto* recognition and then accuse them of "backing off" when they do not agree to nomenclature that in their view implies a degree of recognition of the TRNC (Lafrenière and Mitchell, 1990: 83). The internal logic of most *de facto* states advances political considerations over economic ones. Thus, maintaining official TRNC nomenclature without a mutually beneficial economic project is preferable to securing that project at the cost of being called "Lefkoşa, Cyprus" (the TRNC equivalent of "Taipei, China") or some such name. When it comes to *de facto* statehood, the Taiwanese (at least in recent times) are thus somewhat exceptional in elevating the economic over the political. In this regard, while the Republic of Kosova may be the desired end goal shared by an overwhelming majority of Kosovar Albanians, the question of nomenclature is likely to arise repeatedly in the near future. "Pristina, Kosova" might leave a bad taste in the mouth but it might also facilitate participation in the international arena and result in sizable monetary and economic benefits.

The leading reason that this model is unlikely to see widespread application, however, is that most sovereign states lack the compelling economic incentive to cooperate with other *de facto* states that they have with Taiwan. Taiwan's rapidly growing market of 22 million people with a per capita GNP of more than US\$ 13,200, its manufacturing prowess, and its leadership in a number of high-tech industries argue strongly for finding a way to accommodate it through ruses such as the "privatization" of official relations. Such incentives are simply not present in the case of the 170-some thousand Turkish Cypriots with a per capita GNP of around US\$ 4,000 in a tourism-based economy or in the case of the three million residents of Somaliland with a per capita GNP of only a few hundred dollars a year in an economy based almost exclusively on agriculture and livestock production. They may, however, be present in the case of Kosova—not because of its economic market, population size or high-tech leadership but because of the moral, humanitarian and practical political investment that the United States and other leading western countries have already made in it.

IV. Does the *De Facto* State Have Utility for International Society?

Traditionally, the *de facto* state and other secessionist challengers to existing sovereign states have been viewed in extremely negative terms. They are often seen as problems to be solved or conflicts that need to be resolved. International society's hostility to secession is based on a number of factors. Foremost among these is the domino theory and the fear of never-ending secession. While extreme versions of this theory should be rejected, the structural nature of the state-nation disjunction (thousands of potential nations, less than 200 states) and the potential instability that would characterize any move away from the fixed territorial borders regime are legitimate concerns. International society's general conservatism here manifests itself as a fear of the unknown and a presumption in favor of the devil you know (the existing system) as opposed to the devil you do not know (any new regime allowing for secession). Thus, the standard view

³ "Taiwan Investors Unaffected by Chinese Sabre-Rattling," *Financial Times*, 25 July 1995; "Taiwan: The Outsider," *The Economist*, 2 July 1994.

that secession should only be seen as a remedy of last resort. As Charles Beitz (1979: 111-112) puts it, since secession involves a redistribution of personal, political, and property rights, "it requires a justification against the general presumption that existing arrangements should not be interfered with without good reasons." The extent of economic and other issues to be worked out in any secession—including such things as the division of public assets and debts, treaty obligations, disentangling or maintaining monetary linkages, and the like—also counsels against secession (Bookman, 1992: 119-143).

A variety of other concerns also inform international society's bias against secession. There is the question of mineral resources and the fear that allowing mineral-rich regions to secede may impoverish the remainder of the parent state. This argument was frequently employed against the Katangan and Biafran secession attempts. The inverse of this concern is the fear that the new states created by any secession will not be economically viable. In both of these arguments, secession is opposed because of the fear that it will produce a new group of mendicant states that drain the resources of the international community. The only difference is that, in the first case, it is the secessionists impoverishing the existing state while, in the second, it is the secessionists themselves ending up impoverished. Both arguments suffer from the confused notion of equating economic viability with economic self-sufficiency or autarky (Schroeder, 1992: 549), yet they do raise legitimate concerns. There is also the problem of "trapped minorities"—essentially the fear that secession will create new minorities. One recent example of this was Croatia's secession creating the "trapped" Serb minority in Krajina. Similar concerns obviously attend the "trapped" Serb minority in Kosova. Secession is also opposed because it is seen as contrary to majority rule. How can majority rule work if minorities can opt out whenever they do not like something? Finally, secession is often seen as an inappropriate solution. The evidence from countries such as India and Pakistan indicates that separatist groups can successfully be reabsorbed into a larger pluralistic state. The logic of secession undermines this and therefore undermines the entire concept of the civic, multi-national state. Secession is often justified on the grounds of an inability to participate in political life. Yet, as Lea Brilmayer argues, participatory rights do not suggest secession as a remedy. Rather, "they suggest that the appropriate solution for dissatisfied groups rests in their full inclusion in the polity, with full participation in its decision-making processes" (Brilmayer, 1991: 185).

There are, thus, a number of reasons why international society is hostile to secession and, by extension, to the *de facto* state. In contrast to this prevailing hostility, we now consider the question of whether or not the *de facto* state may, in some cases, actually serve a useful purpose for international society. While the evidence presented is much more potentially illustrative than it is definitive, a good case can be made that the *de facto* state is indeed a useful entity for the society of states (Pegg, 1998: 192-200).

The first way in which the *de facto* state may have utility is as a messy solution to a messy problem. The classic example here is Northern Cyprus. While few would argue that the TRNC represents a just, fair, or optimal settlement to the Cyprus dispute, its effectiveness in terms of reducing tension, violence, and human suffering is hard to question. It is noteworthy that Cyprus registered as a blip on the world's media screens in 1996 when *two* Greek Cypriots were killed in incidents along the green line. The dramatic coverage given to these two unfortunate deaths only serves to highlight the fact that Cyprus has generally been an extremely stable place since 1974. A grand total of six people were killed along the green line from 1988 - 1994. In 1992, Security Council Resolution 774 reaffirmed the UN's view that the present *status quo* on Cyprus is unacceptable. While there is certainly some truth in that, the fact remains that the *status quo* on Cyprus has been quite viable for more than 25 years now. The Greek Cypriot economy has developed rapidly and a majority of Turkish Cypriots are willing to trade the costs of economic embargo for the benefits of political security. The TRNC *de facto* state is a messy solution because it exists in defiance of numerous international legal norms and UN resolutions,

but it is a solution nonetheless. While it is easy to envision potentially better scenarios for the island of Cyprus without the TRNC, it is also easy to envision dramatically worse scenarios than the present *status quo*.

From the perspective of the *de facto* state itself, widely recognized juridical sovereignty is obviously preferable to the inherent uncertainties of *de facto* statehood. *De facto* statehood can, however, offer some advantages as well. To take the case of Kosova, while one can easily envision better scenarios than *de facto* statehood, perhaps along the lines of Taiwan with “privatized” official relations, one can also envision dramatically worse scenarios. The sovereign Republic of Kosova might trump the “Taiwan of the Balkans,” but the Taiwan of the Balkans certainly beats full, immediate and effective reintegration into rump Yugoslavia today.

When push comes to shove, a *de facto* state solution may not be the worst option available to international society either. Indeed, there are a few distinct advantages to using the *de facto* state in this way. First, because international society refuses to recognize the *de facto* state or grant it juridical legitimacy, aggression is not seen to be rewarded and future would-be secessionists are not provided with any encouragement. The rules and norms of existing sovereign legitimacy are thus upheld even though the *de facto* state functions as a sort of ad hoc and unacknowledged solution to the problem at hand. Second, and perhaps most importantly, the existence of *de facto* states does not preclude other future settlement possibilities. There is no reason why the existence of the TRNC or the Republic of Somaliland need preclude any future union, federation, confederation, or specific cooperative or autonomous agreements with Greek Cyprus or with southern Somalia should the political will and popular support exist on both sides to enter into such arrangements. In regard to Taiwan, Victor Li (1979: 138) points out that the “*de facto* entity concept deals with present political realities and does not require or preclude eventual reunification.” Conversely, as the recent anachronistic, vicious and bloody war between Eritrea and Ethiopia shows, Eritrea’s successful graduation from *de facto* statehood to widely recognized sovereign statehood did not guarantee it peace, stability or prosperity.

Another major way in which the *de facto* state may be seen as having utility is as a pragmatic and ad hoc way of reconciling irreconcilable principles. While there may be other examples, our focus here is specifically on what might be called self-determination short of full independence. The phrase “self-determination short of full independence” is essentially shorthand for the belief that self-determination should embody a greater variety of choices than just sovereign statehood or nothing. In and of itself this idea is not controversial. Indeed, the International Court of Justice’s advisory opinion in the *Western Sahara* case as well as General Assembly Resolutions 1541 (15 December 1960) and 2625 (the Declaration on Friendly Relations, 24 October 1970) all acknowledge that an act of self-determination need not result in sovereign independence. Free association or integration with an independent state are also deemed to be “acceptable” forms of self-determination (Buchheit, 1978: 11; Emerson, 1971: 470; Pomerance, 1984: 327; White, 1981/82: 149). Yet, in spite of this, actual UN practice has narrowly interpreted self-determination through a dichotomous lens that presents only two choices: sovereign statehood for the chosen few and absolutely nothing for the rest. As Michla Pomerance (1984: 333) puts it,

the ‘all-or-nothing’ principle obtains, and it revolves around the ‘colonial-racist’ appellation. Those groups subjected to ‘colonialism’ and ‘racism’ are accorded plenary rights—*full* ‘external’ self-determination in the form of independence; but other groups may be accorded *no* rights, the sovereign gates barring secession from within and intervention from without....

The end result of the UN’s all-or-nothing conception of self-determination is that, in Stephen Krasner’s (1988: 90) phrase, “the sovereign state is the only universally recognized way of

organizing political life in the contemporary system. It is now difficult to even conceive of alternatives.”

The argument here is not that the *de facto* state is an ideal solution to the need for more alternatives than just sovereignty or, from the perspective of the affected groups themselves, the vastly inferior concept of minority rights within existing states. Rather, the argument is that in some cases the *de facto* state may serve as a functional “non-solution” to this problem. From the standpoint of the international society of sovereign states, preserving the existing norms against secession and territorial revision is of paramount importance. Yet, forcing highly-mobilized populations with legitimate grievances and responsible leaderships to remain yoked to the likes of a Mengistu, a Milosevic or a Siad Barre is extremely difficult to justify, even on the basis of international order. The international community might, for example, determine that the people of Somaliland deserve better than forced incorporation into Somalia’s warlord-based politics and that the consociational rule of the Egal administration there is far from the worst option available. At the same time, however, there is no desire to encourage other would-be secessionists or to “unfreeze” the existing territorial map. As such, a strategy of either benignly ignoring the Somaliland *de facto* state or reaching some sort of limited accommodation with it may be in the best interests of all parties. Such a solution is not ideal, but it does have the important advantages of leaving future options open; preserving existing international norms; and requiring little in the way of monetary or diplomatic expenditures from international society. In this scenario, the secessionists are allowed, more or less, to get on with their business—with the one huge caveat that they must nominally remain a part of the state which they are trying so hard to leave. Again, one can envision potentially better scenarios for Kosova but one can also easily envision potentially worse scenarios as well.

V. Conclusion

In contrast to the prevailing negativity and disparaging judgments usually leveled against such entities, the argument put forth here is that the *de facto* state may, in some cases and in some regards, actually serve beneficial purposes. It is not claimed that the members of international society have consciously turned to these entities in an attempt to find the proverbial “lesser of two evils” when faced with particularly difficult choices. Nor is it argued that these entities provide ideal solutions or pareto-optimal outcomes. Rather, the much more limited claim is that the existence of *de facto* states produces not only costs, but also benefits for the society of states. The evidence presented for the *de facto* state’s utility is more speculative than it is conclusive but it does suggest that the prevailing view of these entities in solely negative terms obscures as much as it reveals. By its very nature, the *de facto* state is well suited to situations where the international community needs to be seen to be upholding cherished norms, while at the same time finding creative or ad hoc ways of getting around those very same norms. Its inherently nebulous status has the additional benefit of not precluding any other future settlement arrangements. If the *de facto* state did not exist, it might not need to be invented. Its very existence does, however, potentially offer a number of benefits to the society of sovereign states. When pursued along the lines of the Taiwan model, the *de facto* state option may also offer sizable benefits, if not (or not yet) the ultimate prize of sovereign statehood, to the people of Kosova.

References

- Beitz, Charles R. *Political Theory and International Relations*. Princeton: Princeton University Press, 1979.
- Bookman, Milica Zarkovic. *The Economics of Secession*. New York: St. Martin's Press, 1992.
- Brilmayer, Lea. "Secession and Self-Determination: A Territorial Interpretation," *Yale University Journal of International Law*, Vol. 16 (Winter 1991): 177-202.
- Buchheit, Lee C. *Secession: The Legitimacy of Self-Determination*. New Haven: Yale University Press, 1978.
- Cliffe, Lionel. "Eritrea: Prospects for Self-Determination." In Peter Woodward and Murray Forsyth, eds., *Conflict and Peace in the Horn of Africa: Federalism and Its Alternatives*, pp. 52-69. Aldershot: Dartmouth Publishing Company, 1994.
- Emerson, Rupert. "Self-Determination," *American Journal of International Law*, Vol. 65 (July 1971): 459-475.
- Jackson, Robert H. *Quasi-States: Sovereignty, International Relations and the Third World*. Cambridge: Cambridge University Press, 1990.
- James, Alan. *Sovereign Statehood: The Basis of International Society*. London: Allen & Unwin, 1986.
- Krasner, Stephen D. "Sovereignty: An Institutional Perspective," *Comparative Political Studies*, Vol. 21 (April 1988): 66-94.
- Lafrenière, François and Robert Mitchell. "Cyprus: Visions for the Future," Working Paper 21, Canadian Institute for International Peace and Security, March 1990.
- Li, Victor H. "The Law of Non-Recognition: The Case of Taiwan," *Northwestern Journal of International Law and Business*, Vol. 1 (Spring 1979): 134-162.
- Ling, Andrew M. "The Effects of Derecognition of Taiwan on United States Corporate Interests," *Loyola of Los Angeles International and Comparative Law Journal*, Vol. 6 (1983): 163-184.
- Mangelson, Michael E. "Taiwan Re-Recognized: A Model for Taiwan's Future Global Status," *Brigham Young University Law Review* 1992 (#1): 231-251.
- Pegg, Scott. *International Society and the De Facto State*. Aldershot: Ashgate, 1998.
- Pomerance, Michla. "Self-Determination Today: The Metamorphosis of an Ideal," *Israel Law Review*, Vol. 19 (Summer-Autumn 1984): 310-339.
- Randolph, R. Sean. "The Status of Agreements Between the American Institute in Taiwan and the Coordination Council for North American Affairs," *The International Lawyer*, Vol. 15 (Spring 1981): 249-262.
- Rosenau, James N. and Mary Durfee. *Thinking Theory Thoroughly: Coherent Approaches to an Incoherent World*, 2nd edition. Boulder: Westview Press, 2000.
- Schroeder, Gertrude E. "On the Economic Viability of New Nation-States," *Journal of International Affairs*, Vol. 45 (Winter 1992): 549-574.
- Sheikh, Ahmed. "The United States and Taiwan After Derecognition: Consequences and Legal Remedies," *Washington and Lee Law Review*, Vol. XXXVII (Spring 1980): 323-341.
- White, Robin C. A. "Self-Determination: Time for a Re-Assessment?" *Netherlands International Law Review*, Vol. XXVIII (1981/82): 147-170.
- Ya Qin. "GATT Membership for Taiwan: An Analysis in International Law," *New York University Journal of International Law and Politics*, Vol. 24 (Spring 1992): 1059-1105.