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The Battle for International Law: South-North Perspectives on the "Decolonization Era": An Introduction

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Overview

I. Introduction

On 14 December 1960, five years after the Bandung Conference, the UN-General Assembly with an overwhelming majority of 89 votes did "solemnly proclaim(s) the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations".[1] No state voted against the resolution, but all of the still existing colonial powers, including the US abstained. By the mid-1970s more than two thirds of the world's population lived in "newly independent states" having emerged from the former Western and Asian Empires, increasing the absolute number of states dramatically from 51 in 1945 to 120 in 1975. This meant not just a numerical change. Instead, the decolonization era came with a fundamental challenge to (legalised) Western hegemony through a new vision of the institutional environment and political economy of the world. It is during this era, which arguably was couched between classic European imperialism and a new form of US-led Western hegemony, that fundamental legal debates took place over a new international legal order for a decolonised world. In fact, this book argues that this era presents in essence a ***battle***, a battle that was fought out in particular over the premises and principles of international law by diplomats, lawyers and scholars. In a moment of relative weakness of European powers, "newly independent states" and international lawyers from the South fundamentally challenged traditional Western perceptions of international legal structures engaging in fundamental controversies over a new international law.

In the words of George Abi-Saab, who himself became a protagonist in this endeavour, the Third World rejected "the traditional view staunchly held in Western quarters, that a new State is born in a legal universe that binds it, newly independent Third World States started by contesting the alleged universality and legitimacy of the international legal system: a system developed without their participation and used to justify their subjugation; an unjust system, for whilst formally based on sovereign equality and hence reciprocity, in actuality it works in one direction and in favour of one side only; and finally an antiquated system that does not correspond to contemporary conditions and their specific needs".

International law was at the centre of these decolonization struggles, constituting for Third World-international lawyers both, an emancipatory promise and manifestation of colonial subjugation, and for Western internationalists a well-known but now threatened order. Up until the early 1950s, international law had been a discursive structure upheld through

[1] Declaration of the Granting of Independence to Colonial Countries and Peoples, UNGA Res 1514 (XV) (14 December 1960) UN Doc A/RES/1514(XV).

communications of diplomats, scholars and other institutional and individual actors and clearly dominated by Western speakers. This language of international law was in itself unstable and highly indeterminate. It was structurally shaped by its 19th century legacy of differentiating between the "civilized" Europeans (the centre) and the others – the "non-civilized" at the periphery, even though the standard of civilization as such had increasingly fallen into disrepute in the first half of the twentieth century. That international law was a central battle field for a new world order was at the same time surprising as well as to be expected. It was surprising in that international law in the eyes of many protagonists was somewhat discredited as a mechanism enshrining the old order, to fortify and justify it as a just and necessary structure. Law was hence seen as a powerful tool of subjugation. At the same time, for many of the governments and scholars, international law was also the central medium to achieve a fundamental reform of the old order, to remedy substantive injustices through peaceful cooperation.

With more and more new states gaining formal independence during this era international law was fundamentally challenged on various levels: New voices from the Third World appeared on the scene and became part of international legal discourse.[2] Formal independence from the Metropoles as a political event made some of these voices heard in the centre, provoking counter-reactions and thus opened the 'battle' for international law. Others remained marginalized and continued to be silenced and unheard outside of their local and domestic contexts. Some of these new voices asked for a new international law to be a "clean slate", a new law to govern the relationship between peoples and human beings on this globe beyond the existing Western order. They rejected the existing order and claimed that the new participants cannot be bound by a system created without them – or even with the apparent intention of subjecting them. Other protagonists wanted the Third World to "enter" the existing discursive structures based on the concept of equal state-sovereignty, taking a (sometimes more, sometimes less radical) reformist approach to the concepts, rules and principles traditionally subsumed under the term international law by the centre.

These voices pulled various sites and fields into the discursive battle that was international law, fields as diverse as were the main protagonists and their strategies: negotiations on new fundamental multilateral treaties, such as the two international human rights covenants, the Vienna Convention on the Law of Treaties, the Vienna Conventions on State Succession und the UN Convention on the Law of the Sea and the two Additional Protocols to the Geneva

[2] On these voices, see the contributions to this volume in part I.

Conventions were turned into battle-sites. In addition, central concepts of existing international law such as sovereignty, non-intervention, self-determination as well as the main tenets of international economic law were subject to significant controversy within and outside of the United Nations.[3]

These debates and their Third World international legal protagonists as well as the new embattled concepts have often been portrayed as a short-lived Southern or socialist (Cold War-) revolt within the UN General Assembly with ultimately minor and negligible implications for international law and legal scholarship. As the contributions to this volume show, nothing could be more mistaken. Not only that the outcome of this battle has fundamentally shaped what we presently conceive of as international legal structures. With hindsight, we hold that international legal structures in many areas of international relations have been transformed during this era, albeit with the effect of enabling a transition from classic European imperialism to new forms of US-led Western hegemony. The underlying aspirations, strategies and failures of this battle thus are of vital importance for any future project aiming to address and alter the relationship between international law and fundamental inequalities in this world.[4] In that sense, this volume attempts to provide an intellectual history of the transformation of international law in the 1950s to 70s and to offer a better understanding of the contestations to the then dominant perceptions of order. By doing so it aims to give the reader a better grasp of how the world became what it is today by new historical insights into the conditions, contingencies as well as necessities of what led to its current depressing and desolate state. In the remainder of this introduction, we will proceed in three steps. First, we provide a broader context of the "decolonization era", the aspirations and challenges shaping the battle for international law during this time (I.). Then we will introduce central battle fields (II.). Finally, we take a look at protagonists of battle, i.e. authors and scholarly landscapes in which they were set, as well as institutions (III.).

II. The battle period: context and characteristics

1. 1950s-1970s as 'Sattelzeit'

The dominant narrative stresses the years of 1945 and 1989 as major turning points in the history of the global order and international law. In contrast, we want to offer an alternative

[3] On different fields of battle, see the contributions to this volume in part II.

[4] See Nils Gilman, 'The New International Economic Order: A Re-Introduction' (2015) Humanity 1 (who wonders how it came that an agenda that was seen in its time as necessary and fundamental is today almost forgotten or rejected as unrealistic).

reading. We highlight the changes that begin to occur in the early 1950s as a transformative phase leading into what is called the "decolonization era" – a period of time situated between the end of post-1885 European imperialism in the mid-1950s and the beginning of unipolar US hegemony in international relations of the 1980s and 1990s.[5] With this periodization we argue for an alternative and less Eurocentric perspective on the history of international law.[6]

The Third World quest for formal independence first culminated as a conscious and concerted "trans-civilizational" movement with the Afro-Asian Bandung Conference in 1955[7] and lasted roughly until the mid-1970s with the Declaration on the New International Economic Order. It opened a new chapter in world history. It ended the epoch of classic European-led imperialism that had crystallized in the Berlin conference of 1885, when only 14 Western states had carved up Africa without any Asian or African participation, but continued during the negotiations of the UN Charter in 1945, when mere 11 out of 51 negotiating states came from Africa or Asia. The post-Bandung era marked the moment, in which international law for the first time could claim to constitute a universal legal order at least in a formal and geographical sense.[8] Beginning in 1966, 61 states from Africa or Asia constituted a majority within the UN-General Assembly, in which "most of the world" (as Partha Chatterjee aptly put it[9]) were actually represented.

The three decades between the early 1950s and late 1970s connect the end of 'classic' European imperialism with the long rise of US dominance in international relations and a specific model of global capitalism , which was often called "neo-imperialism" or "neo-colonialism" by critical contemporary voices.[10] One could understand these years therefore as a "Sattelzeit" (Koselleck[11]), bridging two different forms of global Western dominance, a transitional phase, in which fundamental concepts of international law were re-imagined, politicized and transformed. These debates were also influenced by the ideological and

[5] On periodizations and their implicit authorization and de-authorization of different narratives and perspectives. Oliver Diggelman, 'The Periodization of the History of International Law' in Bardo Fassbender and Anne Peters (eds) *Oxford University Press Handbook on History of International Law* (Oxford University Press 2012) 997; Pahuja in this volume.
[6] Pahuja and Sanders (in this volume) write: "Periodization is always an argument, never a fact".
[7] Luis Eslava, Michael Fakhri and Vasuki Nesiah, 'Introduction' in Luis Eslava, Michael Fakhri and Vasuki Nesiah (eds) *Bandung, History and International Law: Critical Pasts and Pending Futures* (Cambrigde University Press 2018) (hereafter Eslava et al, 'Introduction'); Onuma Yasuaki, *A Transcivilizational Perspective on International Law: Questioning Prevalent Cognitive Frameworks in the Emerging Multi-Polar and Multi-Civilizational World of the Twenty-First Century* (Hague Academy of International Law 2010).
[8] Eslava et al, 'Introduction' (n 8).
[9] Partha Chatterjee, *Politics of the Governed: Reflections on Popular Politics in most of the World* (Columbia University Press 2004).
[10] Kwame Nkrumah, *Neo-colonialism: The last stage of imperialism* (International Publishers 1965).
[11] Reinhart Koselleck, 'Einleitung', in Otto Brunner, Werner Conze and Reinhart Koselleck (eds), *Geschichtliche Grundbegriffe*, Vol. 1, 1979, S. XV (Klett-Cotta 1994).

military rivalry between the US, the USSR as well as China, often referred to as the Cold War. Especially the threat of a nuclear stand-off between the US and the Soviet-Union shaped popular and scholarly perceptions of international politics during this time masking to an important degree the continuous rise of US economic, political and cultural dominance in the world. In Koselleck's concept of "Sattelzeit" such a transitional phase is marked by a change of meaning of "constitutive" political and legal concepts. Through politicizing, contesting and defending the content of normative structures the politico-legal fabric is being transformed and then subsists over time in a new historical era.[12] As to international law between the 1950s and 1970s these battles over meaning and new content of rules were induced by the collapse of European imperialism and at the surface played out in legal debates regarding all then doctrinally recognized "sources" of international law: in new legislative projects through multilateral conventions, in debates over changing customary law, and in discursive battles over the meaning of general principles of international law. While many of these activities can be located in scholarly debates within categories of various formalised legal "sources", these discursive battles represented deeper challenges and politizations of entrenched post-1885 international legal structures and normative assumptions, such as the pervasive standard of civilization and assumed racial hierarchies.While the Third World's battle for a new international law succeeded in abolishing central discursive structures created by European imperialism, it ultimately could not prevent that new forms of Western hegemony were put in place during this "Sattelzeit" era. This new hegemonic formation, which is still in place today in that sense is a product of the battle for international law. Western governments and international lawyers managed in a classic hegemonic move to translate the discursive rifts created by the Third World-attacks into reforms and processes of restructuration, again portraying Western interests in a new world of formally independent states as universal interests.[13] International legal discourse and the inherent conservative bias of law as a sedimented social practice, was used by Western actors to counter requested revolutionary innovations as incompatible with the "system" or internal "coherence" of a specific notion of "international law".[14] As this volume shows, this process of thwarting the attacks launched by the Third World saw the use of further hegemonic discursive moves, including "boundary

[12] Ibid.
[13] Ernesto Laclau, 'Identity and Hegemony: The Role of Universality in the Constitution of Political Logics' in Judith Butler, Ernesto Laclau and Slavoj Zizek, *Contingency, Hegemony and Universality: Contemporary Dialogues on the Left* (Verso 2000) 44.
[14] Bernstorff in this volume; on "conservative or *status quo* oriented choices" in international legal practice (Martii Koskenniemi, *From Apology to Utopia* (Cambridge University Press 2006) 610).

drawing"[15] between the political and the legal[16], between international and national[17], between private and public[18], as well as between legal and economic aspects[19], in order to exclude revolutionary arguments from the legal battle sites. Another frequent move was to integrate substantive claims made by the Third World in legal and policy-projects under Western institutional control in order to eat up their revolutionary potential.[20] And while the standard of civilization became abolished, separate or antagonistic treatment of the new governments in the peripheries of Western powers could be argued because of them being different as "newly independent", "non-industrialised", "developing", "dysfunctional", "debtor-" or "socialist" states. Another tool from the arsenal of hegemonic usages of international law was to replace multilateralism by bilateral treaty relations, in which the power asymmetry between the super-power or former Metropole on the one hand side and the newly independent government on the other could be brought to bear in an unmediated fashion. All these discursive Western counter-moves were backed up by frequently employed means of economic and military coercion located in Washington and the old Metropoles, rivalled only by Moscow..

2. Precursors, Aspirations and momentum

Of course, the contestation of Western colonial domination and the struggle for independent statehood and formal equality of all nations had started long before 1955.[21] But it was only then that it actually triggered a process of liberation of most Asian and African societies from direct colonial rule. From the perspective of the colonized, neither the League of Nations nor the foundation of the United Nations had been a major breakthrough in their quest for independence. National self-determination at least as a proto-legal concept was on the international agenda at the latest since Wilson's famous 14 points, however originally not conceived as a principle ripe for universal application.[22] In contrast to Lenin's famous writings on the issue from 1914, Wilson during the Peace Conference made this explicit by

[15] Term used by Joscha Wullweber, 'Constructing Hegemony in Global Politics: A Discourse-Theoretical Approach to Policy Analysis' (2018) 40 Adminstrative Theory and Practice, relying on Laclau's concept of "social heterogenity"; Ernesto Laclau, *On Populist Reason* (Verso 2005) 139-56.
[16] Bernstorff in this volume.
[17] Pahuja / Saunders in this volume.
[18] Craven in this volume referring to Carl Schmitt's Nomos der Erde.
[19] Sornaraja in this volume.
[20] Dann in this volume.
[21] Joge Esquirol, 'Latin America', in Bardo Fassbender and Anne Peters (eds), *The Oxford Handbook of International Law*, (Oxford University Press 2012); Arnulf BeckerLorca, *Mestizo International Law* (Cambridge University Press 2014) (hereafter Becker Lorca, *Mestizo International Law*).
[22] Erez Manela , *The Wilsonian Moment: Self-determination and the International Origins of Anticolonial Nationalism* (Oxford University Press 2009); see also Barsalou and Bowring (in this volume)

stating that "it was not within the privilege of the conference of peace to act upon the right of self-determination of any peoples except those which had been included in the territories of the defeated empires."[23]

As Mitchell and Massad have shown Wilson`s approach to self-determination before and during the Peace Conference was not only a selective one but had managed to turn Lenin's anti-colonial understanding of self-determination into an ambivalent concept that could be used for stabilizing and normalizing colonial relationships.[24] Point No. 5 of his famous fourteen points promised "a free, open minded, and absolutely impartial adjustment of all colonial claims, based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the populations concerned must have equal weight with the equitable government whose tile is to be determined". The idea to introduce a balancing test between native "interests" or consent and the interests of the colonizer acting as a trustee of "civilization" had its roots in the US position during the 1885 Berlin Conference pushing for legitimation of territorial control through formalized agreements with native "chiefs".

During the Peace Conference it was the highly influential South African politician and adviser to both the UK and the US government Jan Smuts who managed to convince Wilson to create a Mandate system along these lines. Independence was an issue only for fully "civilized" peoples, for all other populations consent and paternalistic consideration of local interests sufficed. Smuts helped to amalgate the concept of self-determination with the older quest of white settler-colonies for "self-rule" and independence vis a vis the Metropole within larger imperial structures.[25] Both for settler-colonies and for direct forms of colonialism the formal consent of local rulers, representing "communities" usually set up by the colonizers for this very purpose, was supposed to strengthen the legitimacy of the colonial project.[26] And whenever push came to shove and local consent was clearly absent, balancing between the interests of "civilization" represented by the colonizer or white settlers and local resistance would in the eyes of most Western international lawyers inevitably tilt towards the colonizer. Add to this that both world organizations institutionalized supervisory structures for Mandates

[23] On the reception of Lenin's and Wilson's diverging concepts: Joseph Massad, 'Against-Self-Determination' (2018) 9 Humanity (hereafter Massad, 'Against Self-Determination').
[24] Massad, 'Against Self-Determination' (n 24); Timothy Mitchell, *Carbon Democracy: Political Power in the Age of Oil* (Verso 2013) (hereafter Mitchell, *Carbon Democracy*).
[25] Mitchell, *Carbon Democracy* (n 25) 72; Massad, 'Against Self-Determination' (n 24).
[26] Mitchell, *Carbon Democracy* (n 25) 80; see also on the British use of self-determination language in order to legitimize empire, Susan Pedersen, The Guardians: The Legend of Nations and the Crisis of Empire (Oxford University Press 2017) 109.

(League of Nations) and Trust territories (UN) in their founding documents based on that same balancing logic shying away from a radical break with the colonial era.[27] It found its expression in the Mandate or Trusteeship concept as such, which presupposes that the colonized still needed the colonizer to gradually lead them to a higher Western state of "civilization", which would then allow for self-rule and independence. In that sense, self-determination as used by jurists from the centre had a different and much more flexible meaning in the colonial context than it had in an inner-European one, where it over the course of the 19th century had become an "all or nothing" discursive vehicle of nation building and the quest for immediate and fully independent statehood. As applied in the peripheries of the great powers, the concept thus came with a normalizing internal structure inscribed by the standard of civilization. It is one of the legacies of the Bandung Conference and GA-Resolution 1514 to have discredited this normalizing dimension of the concept of self-determination in the colonial context, hereby substantively transforming 20th century international legal structures.

Couched between phases of Western dominance, the battle for international law was shaped by a growing momentum and optimism by Third World protagonists and contemporaries about "decolonization" and its potential. At the beginning under the leadership of politicians like Jawaharlal Nehru (India), Gamal Abdel Nasser (Egypt), Kwame Nkrumah (Ghana), Josip Broz Tito (Yugoslavia) and Sukarno (Indonesia) the Third World seemed relatively united in its attempt to occupy a space of neutrality in the Cold War's ideological confrontation.[28] The non-aligned movement as it emerged right after the Bandung conference was a self-confident counter-proposal to the existing structure of international relations and their legal underpinnings. The widely shared experience of colonial subjugation and liberation was turned into a new ideal of international relations that rejected interventionism, exploitation and racism – and demanded the respect for equality, non-interference, non-violent solution of conflicts as well as material solidarity. The foundation of UN-Conference for Trade and Development (UNCTAD) conference was meant to further institutionalize this co-operative quest for a joint international agenda beyond the bloc-confrontation. With the 1960 UN General Assembly Resolution 1514 on „the granting of Independence to Colonial Countries and Peoples", the group of newly independent countries had already shown its growing

[27] Mark Mazower, *No enchanted Palace: The End of Empire and the Ideological Origins of the United Nations* (Princeton University Press 2013).
[28] Robert J McMahon, 'Introduction' in Robert J McMahon (ed), *The Cold War in the Third World* (Oxford University Press 2013) 1; Khan, Group of 77, MPEPIL (2011), para 5; Vijay Prashad, The Darker Nations: A People's History of Third World (The New Press 2008).

assertiveness in using the UN as platform. There was also an increased willingness to create institutional structures for their demands. Against this background, the notion of Third World, as it was coined in these years by the French journalist and anthropologist Alfred Sauvy and soon gained wide popularity, captured much of this idea. In reference to Abbe Sieyes‘ notion of the third estate in the context of the French revolution, the notion expressed the self-understanding of the newly independent governments to represent the majority of states and people in the world and the demand that this world’s democratic majority should not just be recognized in its position but also granted its effective rights as democratic majority. It was not a hierarchical notion in the sense of the ‚also-ran‘ third (behind the first and the second) world, but the proud emancipative voice of the democratic majority.

At the same time, the (post-Bandung) decolonization movement in many ways continued earlier struggles of the Latin-American states, the Ottoman Empire, China and other Non-Western states for full recognition of the principles of formal equality and non-intervention. Their early 20th century struggles for independent statehood and against unequal treaties, gunboat diplomacy, extraterritorial jurisdiction, corporate exploitation and institutional under-representation in many ways served as blueprints for the Third World before and after decolonization.[29] These early 20th century struggles for full inclusion into- and also modification of 19th century European international law also had made it virtually impossible for the Europeans to infinitely defer formal decolonization in Africa and Asia. Already within the League of Nations references to civilizational superiority as a justification for colonial rule had increasingly become discredited as an official argument.[30] The gradual demise of the standard of civilization as a widely shared official European doctrine in the 1930s prepared the ground for the non-discrimination clause in the UN-Charter and the fight against “racialism” proclaimed in Bandung in 1955. According to Third World scholars, racism was not only tolerated by international legal structures but a constitutive element of 19th century international law:

> “International law was imbedded with white racism and thus promoted the interests of the whites while rigorously subordinating those of others. White

[29] See Eslava, in this volume.
[30] On this development Becker Lorca, *Mestizo International Law* (n 22);; see also: Gary Wilder, *Freedom Time: Negritude, Decolonization and the Future of the World* (Duke University Press Books 2015); Mohamad Shababuddin, *Ethnicity and International Law* (Cambridge University Press 2016).

> racial discrimination was thus a fundamental element of international law during the period in question"[31]

In general, the Third World followed the Latin-American emancipatory project in particular in its attempt to adapt international legal structures to its needs from within the system.[32] As many of the resistance movements in the Third World began in the 1920s and 1930s, the first generation of Third World resistance fighters was shaped by the legal debates of this era. Ho Chi Min for instance had been a delegate at the Versailles conference in 1919. Both the interwar struggles as well as the post-World War II decolonization movement pressured the governments of the great powers and their lawyers to accept that they had a formal right to have the same rights as the great powers granted each other through their diplomatic and legal practice. Statehood in the European 19th century sense was regarded as a precondition to receive that status of a sovereign equal.

But the era of the battle for international law was also different than previous moments of decolonization. Regardless of the emancipatory path-dependencies, many Third World politicians and scholars saw independent statehood and UN-membership more as a means to the end of radically transforming the international political and economic order and its law.[33] A truly universal law not only in terms of the subjects of that legal order but also regarding its substantively reformed content, which for the first time would take into account the interests of all states, seemed in reach. In that sense the Third World project was more revolutionary than that of their Latin-American, Turkish and East-Asian predecessors. Projects like the New International Economic Order bear testimony of the substantive transformations of colonial and neo-colonial structures, which were at the heart of the Third World battle for a new international law. The battle for international law in the *Sattelzeit* between the 1950s and the late 1970s thus closely linked two consecutive and interrelated discourses: the initial struggle for formal independence and the one for substantive political and economic independence of the entities now organised in formally recognized states. While international law was eventually being transformed during this era, this transformation was not the one the Third World had argued for. In the contemporary view of many Third World politicians and scholars, precisely in this era colonialism had been replaced by "neo-colonialism" and both had been sustained by international legal structures imposed on the Third World. As Kwame

[31] Oji Umozurike, *Interntaional Law and Colonialism in Africa* (Nwamife Publishers 1979) 36 (hereafter Umozurike, *International Law and Colonialism in Africa*).
[32] Eslava in this volume; BeckerLorca, *Mestizo International Law* (n 22).
[33] On the role of the UN in this process, see Sinclair in this volume.

Nkrumah put it in 1958 in his address to the first Conference of Independent African Sates in Accra:

> "The imperialists of today endeavour to achieve their ends not merely by military means, but by economic penetration, cultural assimilation, ideological domination, psychological infiltration, and subversive activities even to the point of inspiring and promoting assassination and civil strife"[34]

In the literature on this historical period, the battle for international law is often reduced to the recognition of a formal right to self-determination of the colonized while the struggle for a substantive reversal of international legal structures associated with "neo-colonial" domination goes unmentioned. But it is in particular this part and dimension of the struggle, which in our view deserves historical reflection as an unattained quest for a more just world order. Our argument is that this "Sattelzeit" era brought about the international law of today but not as a simple continuation of colonialism but as a transformed legal and political order, allowing for new forms of hegemonic rule.

3. The Quest for Statehood

Despite the attempt of a number of Third World leaders to create a space of neutrality in the Cold War by the non-aligned movement, it soon turned out that the dark colonial legacies as well as new super-power interventionism into the inevitably weak and contested structures of post-independence statehood made it increasingly difficult, disadvantageous or impossible for the new governments of the Third World not to join one of the major ideological blocs. At the same time, central conceptual building blocks for the new states (statehood and development) were not only largely unquestioned in both ideological blocks but also came with heavy burdens for the newly independent countries.

The quest for independence was connected in an ambivalent way to the unquestioned ideal of modern statehood.[35] While the independence movements fought for international conditions that made the common goal of independent statehood possible, they were faced at home with existing colonial proto-state structures.[36] These structures were usually based on colonial policies of racial segregation and "divide and rule" strategies of the colonizer, which had

[34] Quote by Umozurike, *International Law and Colonialism in Africa* (n 33) 126.
[35] See Eslava in this volume; Bertrand Badie, *The Imported State: The Westernization of Political Order* (Stanford University Press 2000).
[36] Crawford Young, *The Colonial State in Comparative Perspective* (Yale University Press 1994). For the postcolonial ramifications of this, see Upendra Baxi, 'State formative practice' (2000) Cardozo Law Review, #

created and instrumentalized ethnic divisions. Odd Arne Westad describes the experience of local populations with the colonial state as follows:

> "As such, the state therefore emerged as something extraneous to indigenous populations, even at the elite level. The "foreigness" of the state led to a constant need for policing at all levels, even in the most assimilationist of colonies. And the lack of local knowledge, the availability of labour, and the abundance of resources led to the inauguration of grand projects, intended both to deliver raw materials to the empire and to show the indigenous peoples the efficacy and superiority of the colonial state. It is no wonder that the colonized often described their existence as living within a giant prison"[37].

Local economies at the moment of decolonization as a consequence were focused on exporting raw materials and had not been built to generate income let alone welfare for an independent society. To make things even more difficult, these new states with their old colonial borders as well as their remaining legal structures often did not correspond to ethnic and linguistic identities or existing societal and political structures on the ground. And the alleged principle of *uti possidetis* as advanced by the former colonizers made independence dependent on the recognition of these existing colonial borders.

In close connection, the concept of economic growth was equally ambivalent. In many ways the modernisation strategy of the new states followed the footpaths of grand-scale and often disastrous economic and infrastructural interventions of the late colonial era.[38] More subtle but also more effective, the notion of "development" and the 'invention of poverty' (Arturo Escobar)[39] created and dynamized a logic of othering and a 'rationality of rule' (Sundhya Pahuja[40]) that set the 'under-developed' up for an unwinnable race to catch up with the West and allowed the North to dictate the standards pursued. Now framed as a universal value and appealing to all, 'development' was also considered beyond the realm of political contention, a matter of technocratic reform rather than political struggle.

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[37] Odd A Westad, *The Global Cold War: Third World Interventions and the Making of Our Times* (Cambridge University Press 2005) 75 (hereafter Westad, *The Global Cold War*).
[38] Westad, *The Global Cold War* (n 39) 79; John Martinussen, *State, Market, Society: A Guide to Competing Theories of Development* (ZED Books Ltd 1997) 56.
[39] Arturo Escobar, *Encountering Development The Making and Unmaking of the Third World* (Princeton University Press 2011) (hereafter Escobar, *Encountering Development*); see also Balakrishnan Rajagopal, *International Law from Below* (Cambridge University Press 2003) (hereafter Rajagopal, *International Law from Below*).
[40] Sundhya Pahuja, *Decolonizing International Law: Development, Economic Growth and the Politics of Universality* (Cambridge University Press 2011) (hereafter Pahuja, *Decolonizing International Law*).

It is one of the tragic ironies of the decolonization era that modern European statehood and economic growth through industrialisation remained a quasi-unquestioned ideal of the elites ruling the new states.[41] Co-option through education of central parts of the local elites, a key element of colonial control, had in most cases prepared the ground for the local appropriation of these concepts. Only very few scholars or elite politicians doubted the necessity to think in these ideals.[42] Of course national liberation movements and intellectuals in the Third World had a complex and ambivalent attitude towards late 19th century Western modernity and its nationalist, evolutionary and social-darwinistic undercurrents, oscillating between hatred and admiration, as can be exemplified in a quote by Sutan Sjahrir, one of the founders of the Indonesian nationalist movement:

> "For me the West signifies a forceful, dynamic, and active life. It is a sort of Faust that I admire, and I am convinced that only by utilization of this dynamism of the West can the East be released from slavery and subjugation. The West is now teaching the East to regard life as a struggle and a striving, as an active moment to which the concept of tranquillity must be subordinated...Struggle and striving signify a struggle against nature, and that is the essence of the struggle: man's attempt to subdue nature and to rule it by his will."[43]

Under the emerging development paradigm, economic, technical, and humanitarian assistance by one of the super powers or even by the former colonizers was in high demand. It was accompanied by a Keynesian engagement of the state in economic development and a broadly shared acceptance of modernization theory held to provide a path to development that was shared in West and East.[44] Beginning in the 1950s, Western dominated financial institutions, such as the World Bank, assumed a central role as lenders for large-scale development projects.[45] The UN declared the 1960s a ‚development decade'. Several states and multinational institutions created institutional structure for technical and financial support of

[41] Gilbert Rist, *History of Development: From Western origins to Global Faith* (ZED Book Ltd 2008) 100 (hereafter Rist, *History of Development*).
[42] Even a radical critique of Northern neo-colonialism, such as Nkrumah, did not.
[43] Sutan Sjahir, *Out of Exile* (Greenwood Press 1969), quoted after Westad, *The Global Cold War* (n 39) 77. # please find original quote in Westad, *The Global Cold War* (n 39) 77.
[44] Walt W Rostow, 'The Stages of Economic Growth' (1959) 12 The Economic History Review; Rist, *History of Development* (n 43).
[45] Rajagopal, *International Law from Below* (n 41) ; Dann, in this volume; Devesh Kapur, John P Lewis and Richard C Webb (eds), *The World Bank: Its First Half Century Vol 2 Perspectives* (Brookings Institutions Press 1997).

these ‚development' efforts and hence a system of development cooperation infrastructures emerged in West and East.[46]

This search for outside assistance tragically also required newly independent states to position themselves in the antagonistic cold war environment. Both the US and the Soviet Union more or less openly attempted to create and preserve ideological, economic and military "satellite-states" among the former colonies in Africa and Asia. While direct and open military interventions of the two super powers and the former colonizers over the course of these three decades became less frequent, so called "proxy" wars grew in numbers and intensity. This is the time of the Vietnam War, the US invasions in Guatemala und the Dominican Republic, the Soviet intervention in Hungary and Czechoslovakia, U.S. sponsored coups against socialist governments in Iran, Jordan, Congo, Brazil, Indonesia and Ghana, numerous wars of national liberation inter alia in Algeria, Namibia, Angola and Guinea; and perhaps most importantly the time of dozens of other post-independence civil wars in Africa, Asia and the Middle East with covert participation and support to warring factions delivered by neighbouring states, the US, the Soviets, Cuba, China or the former European colonizers. The physical and economic violence unleashed in these liberation and post-independence wars created new- and deepened existing collective traumas; constituting a heavy burden for most of the new societies emerging out of the ruins of the old empires, and now being politically framed in the iron *Gehäuse* of the nation state.

III. Sites of Battle

At stake in this era was not just achieving formal political independence but also a substantive reversal of international legal structures. The Western world for the first time since the early 19th century witnessed was a fundamental challenge to the existing order and to its entrenched interests. The conflict over the shape, scope and the mere possibility of such a reversal was (and continuous to be) a hard-fought, long and multi-facetted battle. Sites of battle included not only contested re-interpretation of existing concepts, new counter-concepts such as "Permanent Sovereignty over Natural Resources", requested reforms of the institutional landscape and new multilateral treaty projects, but also the more fundamental issue of whether or not the old rules would continue to apply and bind the newly independent states.

1. Delegitimising alleged pre-independence rules

[46] Philipp Dann, *The Law of Development Cooperation* (Cambridge University Press 2013) 37 ff.

A general site of battle for the new states was the problem concerning the continued application of colonial-era international law. Furthermore, numerous rules of customary international law were accused of enabling the continuation of colonial relationships, such as the rules concerning the treatment of foreign nationals.[47] Since its inception in 1949, the *International Law Commission* of the United Nations was concerned with questions over state succession, for example the extent to which the new states were bound by international law which existed prior to their independence.[48] The Vienna Convention on the Law of Treaties 1969, the Vienna Convention on Succession of States in respect of Treaties 1978 and the Vienna Convention on Succession of States in respect of State Property, Archives and Debts 1983 were all results of controversial debates between East and West on the one hand, and between North and South on the other.[49] A number of Third World scholars demanded a tabula rasa approach regarding alleged normative ties to pre-independence rules and principles. But even these more radical "clean slate" doctrines remarkably justified their approach within the discursive structures provided by European international law, namely on the basis of consent theories.[50] Their central argument was that the new states had not given their consent to the old law and henceforth these rules for them had no binding force.[51] In this battle over the validity of the old law, Western diplomats and lawyers resorted to the argument that stability and continuity had to be preserved, insisting that with the creation of a new state this entity inevitably gives its tacit consent to the general legal norms of the society it joins.

Again, the Third World quest for membership in the form of legally normalized European style statehood came with a heavy price. Accepting the customary rules constructing statehood while rejecting other rules of customary law was a position not easy to defend. A second line of defense therefore relatively soon became the argument that if their recognition as new states by this order included acceptance of this order, as Western lawyers argued, then the new states should at least have the ability to reshape this order. Resolutions of the UN General Assembly were seen as a central instrument for such a substantive reform of old

[47] See Georges M Abi-Saab, 'The Newly Independent States and the Rules of International Law: An Outline' (1962) 8 Howard Law Journal 95, 101.
[48] United Nations, *Yearbook of the International Law Commission* (United Nations 1949) 39; see also M G Maloney, 'Succession of States in Respect of Treaties: The Vienna Convention of 1978' (1978/1979) 19 Virginia Journal of International Law 885, 900.
[49] For example the negotiations at the United Nations Conference on the Law of Treaties, Second Session Vienna, 9 April-22 May 1969, Official Records, pp. 90.
[50] Krueger, *Die Bindung der Dritten Welt an das postkoloniale Völkerrecht* (Springer 2017).
[51] Krueger, in this volume.

Western international law.[52] This triggered a fierce debate over the legal nature of such resolutions. It was fostered by Western scholars, who accused the Third World of using, what they termed "an automatic majority" of decolonised states in the UN General Assembly – a derogatory term immediately criticized by Southern writers.[53] While rejecting the arguments about the law-making competence of the GA, the North also refused to recognize the validity of other norm-setting initiatives by the decolonised South, not least through the formal ways of non-ratification, reservations and uncounted interpretative declarations and official statements. Thus even today, the 1978 Vienna Convention on Succession of States in respect of Treaties merely consists of 37 member states, and the 1983 Vienna Convention on Succession of States in respect of State Property, Archives and Debts has even less, namely only 14.[54]

1. Condemning interventions by the Metropole as "Aggression"

In their struggle against colonialism and neo-colonialism, the newly independent states focused especially on the principle of sovereign state equality and the related rule of non-intervention and the prohibition of the use of force.[55] A traumatic common experience of the colonized was to have become objects of violent interventions by colonial powers. Motives and forms of European interventions differed from colonizer to colonizer and over time. A common feature was to bring to bear superior forms of weaponry, transport and communication directly or through chartered companies in search for new markets and raw materials, or out of religious zeal or national prestige. Resistance by local populations was

[52] On the contemporary debate, see F B Sloan, 'The Binding Force of a Recommendation of the General Assembly of the United Nations' (1948) 25 The British Year Book of International Law 1; M Virally, 'La Valeur juridique des Recommandations des Organisations Internationales' (1956) 2 Annuaire Français de Droit International 66; Rosalyn Higgins, *The Development of International Law Through the Political Organs of the United Nations* (Oxford University Press 1963); Obed Y Asamoah, *The Legal Significance of the Declarations of the General Assembly of the United Nations* (Springer 1966); Richard A Falk, 'On the 'quasi-legislative' competence of the General Assembly' (2017) 19 AJIL ??????
On the positions of Elias, see Landauer, in this volume.

[53] See e.g. Mohammed Bedjaoui, 'A Third World View of International Organizations. Actions Towards a New International Economic Order' in Georges M Abi-Saab (ed), *The Concept of International Organization* (UNESCO 1981); Mohammed Bedjaoui, *Towards a New International Economic Order* (Holmes and Meier Publishers Inc 1979) 144.

[54] United Nations Treaty Collection, Chapter XXIII: Law of Treaties, Vienna Convention on Succession of States in Respect of Treaties; United Nations Treaty Collection, Chapter III: Privileges and Immunities, Diplomatic and Consular Relations, etc., Vienna Convention on Succession of States in Respect of State Property, Archives and Debts.

[55] Gaetano Arangio-Ruiz, *The United Nations Declaration on Friendly Relations and the System of the Sources of International Law* (Springer Netherlands 1979) 153. For a comparison with current positions, see Antony Anghie and Bhupinder S Chimni, 'Third World Approaches to International Law and Individual Responsibility in Internal Conflicts' (2003) 2 Chinese Journal of International Law 77-103, 81.

often crushed with utmost brutality. Up until the 1960s France and the UK in many instances did refuse to accept classic limits of military violence imposed by international humanitarian law, let alone human rights obligations when crushing rebellions and resistance in the colonies by often excessive military force.[56] The estimated death toll among local populations caused directly or indirectly by colonial military interventions since the mid-nineteenth century according to recent estimates was around five and a half million.[57] Two main projects can be discerned: The recognition of liberation movements against colonial rule and the entrenchment of a broad prohibition of the use of force and of a widely conceptualised non-intervention principle.

What was at stake legally with regard to liberation movements against colonial rule was not the question whether taking up arms against a colonial regime for one's own self-determination was legitimate under international law.[58] Western scholars traditionally had held international law to be indifferent to inner-state violence and had more recently also clearly recognized the political struggle of liberation movements against colonialism. What the Third World authors propagated instead was a full internationalisation of such conflicts, with a *jus ad bellum* for liberation movements and the depiction of colonial powers as "external aggressors" as well as the full recognition of liberation wars under international humanitarian law. With internationalisation of the conflict they could claim a status of combatants under international humanitarian law – which was a much more favourable status than being treated as "criminals" in a purely internal conflict. This points to the larger issue behind the debate. The battle for internationalization of wars of national liberation was also a battle about identity and the recognition of the historical justification for freedom fights and rejection of the colonial project as illegitimate aggression.[59] The full recognition of national liberation movements as actors in an international armed conflict came in 1977 after a Third World battle led by Abi Saab during the entire span of the negotiations over the two Additional Protocols to the Geneva Conventions.[60]

Newly independent states also desired protection against intervention by European states and the two superpowers demanding a ban on economic and political coercion in international relations, thereby expanding the scope of the principles of non-intervention and the

[56] Fabian Klose, *Menschenrechte im Schatten kolonialer Gewalt*: *Die Dekolonialisierungskriege in Kenia und Algerien 1945 - 1962* (DeGruyter 2009) (herafter Klose, *Menschenrechte im Schatten kolonialer Gewalt*).
[57] Westad, *The Global Cold War* (n 39) 73
[58] Von Bernstorff, in this volume.
[59] Von Bernstorff in this volume.
[60] On this battle, Georges M Abi-Saab, Third World Quarterly, #; on the role of Soviet government in these discussion, see Bowring, in this volume.

prohibition of the use of force.[61] They pushed for their demands in different fora and with different success. In the UN General Assembly they were able to adopt a number of resolutions that aimed to concretise the principle of non-intervention in the UN Charter[62], though the legal effect of them remained contested and later raised increasing Western opposition.[63] In a different venue, negotiations about the Vienna Convention on the Law of Treaties offered the opportunity to define the notion of 'coercion' in Art. 51 and 52. Newly independent states demanded a broader understanding of the concept beyond military coercion but met with fierce resistance from Western countries.[64]

At the same time many of the new governments in the South entered into bilateral military assistance treaties with the former Metropole or one of the two superpowers, leading to a world-wide military presence of the US and to numerous military interventions by the former Metropoles assisting cooperative governments in the global south in case of civil unrest and revolution.

2. Banning racial discrimination and establishing human rights as a discursive "weapon"

Banning racial discrimination was a crucial element in the process of redirecting international law, for which racial inequality had been an essential discursive structure. During this era, the GA adopted the Convention on the Elimination of All Forms of Racial Discrimination 1965 (CERD) and the International Convention on Suppression and Punishment of the Crime of Apartheid (1973). The concrete genesis of CERD, however, was rather driven by European and Israeli actors and hardly constituted a strategically pursued project of Third World governments.[65] Establishing a human rights machinery within the UN as a discursive tool to criticize colonialism in all its forms, in contrast, played a more central role for the Third

[61] See Official Records of the General Assembly, Eighteenth Session, Sixth Committee, 789th Meeting, UN Doc A/C.6/SR.789, Para. 25.
[62] Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty, GA Resolution 2131 (XX) (21 December 1965) (adopted without dissent, with one abstention); Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations A/Res/ 2625 (XXV) (24 October 1970). On these efforts, see Barry Carter, 'Economic Coercion' in *Max Planck Encyclopedia*, para. 6-9.
[63] GA Res 42/173, entitled Economic Measures as a Means of Political and Economic Coercion against Developing Countries of 11 December 1987, used similar language as the 1965 Declaration, but the recorded vote was 128 States for, 21 against, and 5 abstaining.
[64] Richard D Kearney and Robert E Dalton, 'The Treaty on Treaties' (1970) 64 Journal Intl Law 495, 532-35.
[65] Add to this that the Anti-Apartheid Convention certainly had an important symbolic dimension but was hardly put to use, see Giladi, in this volume. On the ominous role of the ICJ with regard to apartheid, see Venzke in this volume.

World. The legally non-binding Universal Declaration of Human Rights for obvious reasons had not, with the exception of India, received substantial input from the colonised states.[66] At the same time, the remaining European colonial powers in the late 40s and early 50s launched various initiatives in the UN to define colonial regimes as a form of polity, which had to remain outside the reach of international human rights norms, culminating in a joint proposal to insert a colonial exception clause into the new human rights covenants..[67] This proposal was defeated in the Third Committee by an early demonstration of Third World governmental solidarity in favour of the colonized. Subsequently, the newly independent states fiercely engaged with the negotiations over what would become the major UN human rights covenants and their adoption in 1966 (ICCPR and ICESCR). It was in fact mainly the decolonised South, which in the 1950s pushed ahead with the human rights discourse at the UN.[68] In reaction to colonial injustice and racial suppression, for most of the newly independent states the right to self-determination and human rights were two sides of the same coin.[69]

With both the UK and France in the 1950s and 60s establishing systematic practices of torture, summary executions, collective punishment and arbitrary detention in reaction to colonial rebellions in Africa, independence movements like the FNL in Algeria realized that communicating such atrocities internationally in the language of rights would strengthen their anticolonial struggles within the UN.[70] Underlying many Third World interventions during the negotiations over the two UN human rights treaties was also the aim to legally entrench the right to self-determination as the fundamental basis for the realisation of human rights. Leading governments of the "decolonised" states argued that only within an environment free from colonial and postcolonial dominance could human rights be fully realised.[71] This attempt to establish a legal connection between the right to self-determination and human rights was largely rejected by Western States formally because of its collective dimensions allegedly being incompatible with a covenant-project for individual rights and freedoms. As Western

[66] Mary A Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (Random House Trade Paperbacks 2001); Jochen von Bernstorff, 'The Changing Fortunes of the Universal Declaration of Human Rights: Genesis and Symbolic Dimensions of the Turn to Rights in International Law' (2008) 19 The European Journal of International Law 903 ff.
[67] Roland Burke, *Decolonization and the Evolution of Human Rights* (University of Pennsylvania Press 2013)41 (hereafter Burke, *Decolonization and the Evolution of Human Rights*).
[68] The role of human rights in the decolonization period has been intensely debated – pitting the view of their centrality (Burke) against a "revisionist" reading of the history, according to which human rights in this era actually served a fairly limited purpose (Moyn). On this debate, Hoffmann and Assy in this volume,who argue that the historical evidence has been greatly researched but its interpretation now remains ultimately inconclusive.
[69] Roland Burke, '"The Compelling Dialogue of Freedom": Human Rights at the Bandung Conference' (2006) 28 Human Rights Quarterly 947, 962-64 (hereafter Burke, '"The Compelling Dialogue of Freedom"').
[70] Klose, *Menschenrechte im Schatten kolonialer Gewalt* (n 58).
[71] Burke, '"The Compelling Dialogue of Freedom"' (n 71) 947, 962-64.

governments had sensed early on, however, the anticolonial and revolutionary dimension of linking self-determination with human rights came with an explosive dimension not only for the still existing colonial empires but also for contemporary racialized forms of rule in the former white settler colonies in South-Africa and Rhodesia. Add to this the Palestinian quest for self-determination and non-discrimination.

Eventually, self-determination was included in the common Art. 1 of the two key UN human rights treaties.[72] After independence many of the new governments, often led by former independence fighters, themselves established authoritarian political systems, using the repressive and violent potential of the nation state-form inherited by the colonizers. They joined the former colonizers and the USSR in using human rights as a diplomatic "weapon" within the UN while many Third World governments more or less systematically ignored human rights obligations in various sectors of their own governmental action. Such forms of hypocritical and selective insistence on human rights obligations of course constituted a common feature of the emerging human rights discourse in Cold War New York with all great powers having a problematic human rights record either at home or because of their violent interventions in their peripheries.[73] The fact that many Third World leaders adopted this hypocritical great power practice in their foreign policy led to the following polemical remark by the Tanzanian President Julius Nyerere, criticising his African colleagues: "we will soon be tolerating facism in Africa as long as it is practised by African governments against African peoples".[74] Hence, the use of human rights language by all governments within the UN most of the time came with an instrumental dimension. Nonetheless decolonization struggles as the main world historical development during that era, in particular if understood broadly and including the struggle against white settler colonialism in South Africa, had a major impact on the evolution of human rights as the dominant "lingua franca" of international morality; all of this beginning already with the immediate reception and discursive usage of the Universal Declaration in the UN during the late 1940s and early 1950s.[75]

[72] Jörg Fisch, *The Right to Self-Determination* (Cambridge University Press 2015). On the problematic role of the US government in the conceptualization of this right (and its conception as human right), see Barsalou, in this volume.
[73] Jan Eckel, *Die Ambivalenz des Guten: Menschenrechte in der internationalen Politik seit den 1940ern* (Vandenhoeck & Ruprecht 2014).
[74] Quoted in Burke, *Decolonization and the Evolution of Human Rights* (n 69) 57.
[75] While Burke generally makes this point, he somewhat artificially and ultimately unconvincingly differentiates between the „good" early Third World embrace of human rights and democratic „self-determination" language in the 50s and its more reprehensible instrumental usages in the 1960s.

3. Reconfiguring the world's economic system

As formal political independence was increasingly secured, attention turned more and more to the economic dimension of self-determination and economic sovereignty became a key concern. One characteristic feature of debates was that the notion of 'development', which had been in use only for a fairly short time, had almost immediately caught on especially with local elites. But together with economic growth it provided overarching and largely uncontested paradigms of understanding and action.[76] But within the confines of these paradigms, a battle over how to reconfigure the world's economic system unfolded. In this, like in other areas, a variety of battle sites emerged with similar battle lines that mostly pitted Northern against Third World protagonists and the Soviet block sometimes as an important partner of the Third World. One element of the increasingly open rifts between North and South was the shift from a more technical, economics perspective that had informed discussions in the 1950s to political economy and political take as 1960s and 70s progressed. But in all areas, political or economic positions were often recounted in legal debates and legal instruments.

The first important site concerned the question of natural resource extraction. As colonies had been economically structured to serve the centre's quest for raw materials, colonial economies were geared towards natural resource extraction. The question of who should have the final say over those industries logically soon emerged and Third World governments understandably demanded ultimate say and hence 'permanent sovereignty over natural resources'.[77] During European colonial expansion, it was common for colonial powers to secure the exploitation of natural resources through contracts with private investors from the Metropole (concessions) and via the imposition of non-reciprocal, so-called "unequal" treaties.[78] The independence of former colonies thus subjected the continued enforceability and in fact validity of both granted concessions and such treaties to question.[79] The most

[76] On the astonishing success or lure of the development paradigm but also on the few more sceptical voices ‚from below', see Rajagopal, *International Law from Below* (n 41); Bret Benjamin, *Invested Interests: Capital. Culture, and the World Bank* (University of Minnesota Press 2007); Escobar, *Encountering Development* (n 41) 19.

[77] On the evolution of this concept, see Pahuja, *Decolonizing international Law* (n 42); Nico Shrijver, *Sovereignty over Natural Resources: Balancing Rights and Duties* (Cambridge University Press 1997).

[78] See in the contemporary literature, Ram P Anand, *New States and International Law* (Vikas Publishing House 1972) 23 (hereafter Anand, *New States and International Law*); for current accounts, see Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press 2008) 67 ff.; Matthew Craven, 'What Happened to Unequal Treaties? The Continuities of Informal Empire' (2005) 74 Nordic Journal of International Law 335, 344; Anne Peters, 'Unequal Treaties', in Rüdiger Wolfrum (ed), *Max Planck Encyclopedia of Public International Law* (2007).

[79] See debates in the International Law Commission, e.g. in United Nations, *Yearbook of the International Law Commission* (United Nations 1962) 4.

prominent and contentious legal issue here was the question of the fate of colonial concessions for resource extraction granted by the Metropole to Western companies.[80] Western international lawyers claimed that these were ultimately private property of private investors and protected by the supposedly long-standing 'doctrine of acquired rights'.

The fact that Western investors now operated on the territory of a foreign jurisdiction made a complex re-arrangement of the legal relationships between the investor and the involved governments abroad and at home necessary.[81] Like on most battle sites analysed in this volume, Western international lawyers provided the respective argumentative redundancies in order to secure the interests of the industrialised West; or in more concrete terms scholarly contributions and expert advice helped to ensure that this necessary re-arrangement would either lead to new Western business opportunities or "full compensation" of lost ones. The strategic transformations in the field of colonial concessions ultimately gave birth to a new system of investment protection.[82] Early arbitral awards on disputes over nationalisation projects, with well-known Western international lawyers in the role of leading arbitrators, helped to prevent the application of domestic law of the newly independent states regarding such disputes.[83] During this battle Western scholars advanced not only the theory of "sancticity of acquired rights" but also of the "internationalisation" of investment contracts. Strategically, this Western move aimed at excluding the domestic law of the new host states and thus their regulatory frameworks from the scope of applicable law in disputes over regulatory interventions by the new governments. Third World international legal scholars criticized the rise of the "theory of internationalisation" as well as the sudden discursive rise of the "acquired rights" doctrine as an alleged fundamental principle of international law. Bedjaoui in the ILC in the context of deliberations on the codification of the laws of state succession fiercely objected the insertion of the principle of acquired rights.[84] Western ILC members accused Bedjaoui of being too "political" lacking the required "objectivity", a typical reaction of Western authors to substantive protest voiced by Third World international lawyers.[85]

Configuration of the international trading system was another central battle site. While it was uncontested that trade would be central to the economic success of the former colonies, the

[80] See Craven and Brunner in this volume.
[81] Craven, in this volume.
[82] Ibid.
[83] Sornaraja in this volume
[84] Brunner in this volume.
[85] Ibid.

basic understanding of the system and terms of trade became increasingly contested. Modernization theory and the idea that the Third World should replicate Western history, which had dominated the early thinking, was considered increasingly unconvincing in the Third World, considering the experience of Latin American states since the 19th century. Instead, Latin American authors in particular had formulated a counter-narrative in form of the dependency theory that rebalanced understanding of responsibilities for the problems facing Third World economies.[86] Institutionally, Third World governments complemented the rise of the dependence theory with the founding of UNCTAD in 1964 and the Group of 77. An important part of this battle was the debate over the understanding of the role of multinational corporations – fought along North-South battle lines.[87] Regularly owned by Western actors and very often with histories reaching back to colonial founding and heritages of violence and exploitation, they were increasingly seen by Third World writers as harmful rather than beneficial for their economies, as Western economists and governments would claim. Discussions culminated at the UNCTAD III conference held 1972 in Chile, where not just the understanding of corporation but also the question of their regulation was discussed. While Western states argued that their role was best dealt with in domestic law of the hosts states, many Southern states favoured an international instrument to regulate their conduct. But even though Third World governments succeeded in placing the topic on the agenda and create a Commission to study the role of multinational corporations, they were not successful in creating a binding instrument to control their actions.

Another debate over the economic system unfolded that had an important anchoring in legal questions – and that was a debate over the sources and forms of financial assistance.[88] As much as trade would over time allow the newly independent states to become equal partners in the economic system, so the general assumptions went, in these early years of formal independence, financial support from the North was considered essential by most actors.[89] In fact, the final communiqué of the Bandung conference opens with a call for further economic cooperation and assistance. Yet the source of such assistance was a major point of contention and struggle. Third World governments demanded multilateral institutions of support and in particular argued that the UN should provide funds, while Western governments preferred bilateral aid. While the Third World was unsuccessful in pushing for UN capital assistance, this battle led Western states as a counter-move to turn the World Bank into a development

[86] David K Fieldhouse, *The West and the Third World* (Oxford and Malden (Blackwell) 1999) Chapter 6.
[87] Jennifer Bair, 'Corporations at the UN?' (2015) Humanity 159; Pahuja and Saunders, in this volume.
[88] See Dann, in this volume.
[89] On the prescience or apprehension of a few critical voices (such as Fanon or Nkrumah), see Benjamin, #.

agency. As it was often the case during this era, the West under pressure by the Third World, public opinion and the Soviet block in the UN, after having derailed and ignored new institutional blueprints and creations with equitable representation by the Third World, took up the respective topic within an institution under its own control.[90] Insulated against meaningful Southern participation, the issue of poverty in the Third World could now be framed by the World Bank under the investment friendly "growth" and "development" paradigm. Many Third World governments in their quest for Western style modernisation and industrialisation and due to volatile prices for the small number of commodities, on the export of which their internal economies now depended, quickly became "debtor" states.[91] They now heavily depended on the World Bank and other Western financial institutions, making them ripe for further Western interventions into their political, economic and social systems.

4. Drafting a new Law of the Sea and the quest for sharing a "common heritage of mankind"

A further site of battle was the attempt since the 1950s and 1960s to comprehensively codify the law of the sea. This process was only completed in 1982 by the adoption of the UN Convention on the Law of the Sea (UNCLOS). While initially the negotiations were strongly influenced by the Cold War and military questions of strategic importance, during the era of decolonisation UNCLOS became the object of a globally controversial debate over justice and redistribution. The core of the redistribution-debate concerned the conflict over who is economically entitled to newly-discovered maritime resources such as minerals and fisheries in the deep sea-bed. The UNGA adopted in 1970 the well-known Resolution 2749 (XXV), which declared the deep-sea floor as the "*common heritage of mankind*" and planned the common globally administrated economic use of the deep sea floor.[92] Resulting benefits were supposed to be used for the "development" of Third World countries. The UNCLOS negotiations included numerous divisive issues that pitted socialist states against capitalist

[90] See Dann, in this volume.
[91] Already in the 1930s Carl Schmitt had sensed that the fundamental "non-civilized"/"civilized" distinction of European international law was under US influence being gradually replaced by a new dichotomy between "debtor states" and "creditor states", Carl Schmitt, 'Völkerrechtliche Formen des modernen Imperialismus' in Carl Schmitt, *Positionen und Begriffe* (Duncker & Humblot 1940) 164; cf. on public debt and the Third World also Pahuja, *Decolonizing International Law* (n 42).
[92] GA, Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, Beyond the Limits of National Jurisdiction, GA A/RES/2749 (XXV) (12. December 1970).

states and big coastal states against maritime have nots, including the breadth of the continental shelve, the scope of a future treaty and the concrete regime governing the seabed.[93] Large G 77 coastal states like India had pushed for an extension of economic zones of exploitation for the coastal states. One of the first victims of this battle was solidarity with land locked states and smaller coastal states. Another one was the idea of redistribution based on a sustainable joint use and administration of a "Common Heritage of Mankind" being denounced as "socialism" by Cold War - Western leaders.[94] Add to this, that the resulting enormous extension of exclusive economic zones and continental shelves turned out to be a Pyrrhus victory for the Third World, with many newly independent states opening their zones for industrial OECD based fishing fleets through licences in the quest to generate governmental income, or being unable to fight illegal fishing and environmental pollution by foreign fishing fleets in these legally extended zones.

By limiting international administrative structures to the ecologically and economically much less relevant sea bed area, capitalist exploitation of the resources of the sea in all other areas of the sea could take its new and more excessive forms.[95] Western governments engaging in these battles knew of course that it would be much easier in the future to be granted access to these national zones of exploitation when dealing with individual states from the Third World on a bilateral basis than by having to cooperate with a centralised international institution administering such resources.[96] The implementation of the thus transformed law of the sea regime, despite various substantive norms in UNCLOS on sustainable fishing and environmental protection, destroyed not only dozens of societies along the coasts of the Global South depending economically on cultivating traditional fisheries, but it also actually led to the ecological "death" of the seas predicted since the late 1970s.[97] Innovative Third World strategies from this era to pursue projects of joint moderate exploitation of natural resources both on land and sea under strict scrutiny of equitable international institutions, including mechanisms of redistributing generated incomes, were never actually realised.[98]

IV. Protagonists in Battle

[93] On this battle, see Ranganathan, in this volume.
[94] See Ranganathan, in this volume.
[95] Cf. Ranganathan, in this volume.
[96] Information from an interview conducted with a former Western delegate to the UNCLOS negotiations.
[97] For a contemporary voice Wolfgang Graf Vitzthum (Hrsg.), *Die Plünderung der Meere: Ein gemeinsames Erbe wird zerstückelt* (Fischer Taschenbuch Verlag 1981).
[98] Martii Koskenniemi and Marja Lehto. 1996. 'The privilege of Universality: International Law, Economic Ideology and Seabed Resources' (1996) Vol 65 Nordic Journal of International Law nos. 3-4: 533-555.

1. Third World Scholars

The battle over international law was fought in various places – on open battle fields as much as on hilly, uneven, unclear terrain, with open face or in disguise. It was a battle waged in diplomatic fora, on political podium but as much in academic journals and at conferences. Who were the international legal scholars that participated in the battle for international law and how did they position themselves methodologically? What role did institutional actors, like the ICJ, the UN or the World Bank, play?

A broad and diverse range of authors, including inter alia R.P. Anand (India), T.O. Elias (Nigeria), Mohamed Bedjaoui (Algeria)[99], Charles Alexandrovicz, Upendra Baxi, Syatauw J, Singh N. (all India)[100], U. Umozurike (Namibia)[101], George Abi-Saab (Egypt) or Francis Deng (South Sudan) from the Third World but also a few Western authors, such as Charles Chaumont[102], Richard Falk, Bert Röling as well as Soviet writers such as Morozov and Starushenko[103], attacked central doctrines of international law as instruments of colonialism or simply as out-dated.[104] Most of them belonged to the younger generation (born in the 1920s and hence in their 30s or 40s) and most of the Southern scholars that were actually heard had received an education in the West. They entered a battle field that was no familiar terrain and had few precursors to look at. The epistemic imbalance of the field was tremendous. While the UN provided Third World governments a platform to present their political positions, the academic world (universities, journals, conferences) offered a much less inviting area for Third World voices to be heard. Nonetheless, a small number of voices did enter the conversation. Criticism of European international law was formulated on different levels and with different strategies in mind. Some fought the battle with a more moderate, 'contributionist' strategy, conceiving international law as an important and surly malleable structure, which the new states could further develop into a truly universal order that served all. Others were more sceptical and pursued a rather radical, critical strategy,

[99] On these three authors, see the contributions by Singh, Landauer and Öszu, in this volume.
[100] J Syatauw , *Some Newly Established Asian States and the Development of International* Law (Martinus Nijhoff 1961); N Singh, *India and International Law* (Publishing Company 1969); Anand, *New States and International Law* (n 80); Ram P Anand (ed), *Asian States in the Development of Universal International* Law (Vikas Publications 1972); Prakash Sinha , *New Nations and the Law of* Nations (Sijthoff 1967); Oji Umozurike, *International Law and Colonialism in Africa* (n 33).
[101] See Gevers in this volume.
[102] On Chaumont, see Jouannet, in this volume (also with reference to the larger number of French authors, which supported the idea of a droit international du developpement).
[103] See Bowring, in this volume.
[104] The mostly American driven and funded 'law and development' movement was equally concerned with the role of law in the development process but was less concerned with international than with domestic law reform. See David M Trubek, 'Toward a Social Theory of Law: An Essay on the Study of Law and Development' (1972) 82 Faculty Scholarship Series Yale Law School 1 – 50.

considering the existing order as profoundly unjust and hard to change.[105] Many of the writers mentioned here became very important advisors to their respective governments or took on highly influential positions. [106] Elias became the first non-Western President at the ICJ, Bedjaoui served several times in the ILC and the ICJ, Anand and Abi-Saab played important roles as advisors to their governments and in various UN bodies. Their performance and argumentation in these roles surely changed over time and was highly context-dependent, though it is apparent that Bedjaoui was the most critical voice, while Anand or Elias (though equally clear in their demand for profound changes in the international legal order) took more conciliatory approaches to present day international legal structures.

The history of international law played a major role in the writings of many Third World legal scholars in the 1950s and onwards. It was a process of re-description as much as re-appropriation that served a number of different functions. Many scholars put effort into describing the pre-colonial existence of international law of non-Western origins.[107] By outlining complex normative systems in ancient Indian, African or Chinese writings it was indicated that the *merely European*, modern system of international law as it emerged in the 18th and in particular the 19th century to the exclusion of others was rather a doctrinal aberration and usurpation born of ignorance than normative prominence.[108] It was an attempt to demonstrate the much broader and common, universal roots of public international law and hence to build bridges between Western and non-Western conceptions. At the same time, critical Third World scholars used historical and materialist analysis to re-describe colonialism as a history of exploitation of peoples from the Third World. In these writings, all standard justifications of colonialism, such as religious, "civilizational", racial and technical superiority were deconstructed as either well-intended or cynical strategies of domination. For authors like Anand, classic European international law with its implicit civilizational hierarchies had been constructed by colonial powers in order to exclude and dominate non-

[105] On this distinction, see Gevers, in this volume. Also M Mutua, 'What is TWAIL?' (2000) Society of International Law Proceedings 31; Obiora C Okafor, 'Newness, Imperialism, and International Legal Reform in Our Time A Twail Perspective' (2005) 43 Osgoode Hall Law Journal 176; James T Gathii, 'Africa' in Bardo Fassbender, Anne Peters and Daniel Högger (eds), *The Oxford Handbook of the History of International Law* (Oxford University Press 2012) 407 (hereafter Gathii, 'Africa').

[106] For reflections on such roles today, see Luis Eslava and Sundhya Pahuja, 'Beyond the (Post-)Colonial' (2012) Verfassung und Recht in Übersee (VRÜ) 195.

[107] On Elias in this regard, see Landauer, in this volume; see e.g. Charles H Alexandrowicz, *An Introduction to the Law of Nations in the East Indies* (Clarendon Press 1967); K A Nilakanta Shastri, *International Law and Relations in Ancient India*, IYIA (Indian Yearbook?) 1952 97; Bhupinder S Chimni, International Law Scholarship in Post-Colonial India' (2010) Leiden Journal 27 with further references for India.

[108] As a current argument along these lines, see Onuma Yasuaki, *International Law in a Transcivilizational Perspective* (Cambridge University Press 2017) 59.

European nations. And in more concrete terms, authors analysed the function of various doctrines and principles of international law in the colonial enterprise.

> "Thus even a cursory look at the history of international law leaves no doubt about the Eurocentric nature of this law developed by and for the benefit of the rich, industrial, and powerful states of Western Europe and the United States."[109]

> "The vast majority of peoples had neither any voice nor any right and were meant to be exploited and, if necessary, colonized to serve the interests of their masters".[110]

It is this historically grounded critique of colonial legacies, which was supposed to prepare the ground for a new international law after decolonisation, and fifty years later also inspired the *Third World Approaches to International Law* - movement for a new critique of post-millennium international legal structures. But historical analysis was also used in more pragmatic ways to provide arguments in concrete court cases, for example when M. Bedjaoui argued the Western Sahara case at the ICJ and delved deeply into the history of the terra nullius doctrine. Or it was used in more scholarly doctrinal skirmishes, such as when it was argued that urgent changes and hence new instruments of law-making were now needed and hence the law-making powers of UNGA was called for. Ultimately, this re-appropriation of history also served the broader aim of reclaiming identity, reject the idea of peoples without history or concretely the rehabilitation of Africa;[111] a revisionist or postcolonial reading of history, if you want.

Another inroad for Third World scholars was the standard assumption that international law (like any law) had to reflect realities and adapt to sociological changes in the international society.[112] In the eyes of Third World scholars, decolonisation could not but count as a dramatic change that demanded nothing less than a new international law.[113] Such arguments could tap into a standard anti-formalist narrative of international law lagging behind important societal changes. Moreover, some references to community values, such as human rights and solidarity among nations had mushroomed in 1940s and 50s Western legal scholarship and could now be recycled for the concrete causes of the Third World struggle.[114] But here too,

[109] Anand, *New States and International Law* (n 80) 45.
[110] Ibid, 114.
[111] Gathii, 'Africa'(n 108) 410, 414.
[112] Martii Koskenniemi, *The Gentle Civilizer of Nations* (Cambridge University Press 2009) 474 (hereafter Koskenniemi, *Gentle Civilizer*).
[113] Anna Krueger, *Die Bindung der Dritten Welt an das Völkerrecht* (Springer 2017).
[114] Umut Özsu, '"In the interests of mankind as a whole": Mohammed Bedjaoui's New International economic Order' (2015) 6 Humanity 6 (hereafter Özsu, '"In the interest of mankind as a whole"').

different varieties of the turn to sociology can be discerned. Sociological inquiries were particularly popular at the US East coast schools, even though pragmatic voluntarism might have dominated much of the Western practice of international law.[115] At Yale, where among others Elias, Anand and Deng studied, and at other schools, an approach to international law was pursued that was influenced by legal realism in domestic law and build on a close exchange with the international relations field. Formalism had lost its hold on legal doctrine generally but in particular in the field of US international law, where policy guidance had become more important. A somewhat different take on how to understand and integrate facts took those Third World authors, who received their legal education in France, most prominently among them Mohammed Bedjaoui. He was influenced by the neo-Marxist analysis of international legal structures as it was developed by the Reims school in international law headed by Charles Chaumont.[116] Bedjaoui like Chaumont did see a need for a new international law and based their analysis on a highly critical politico-economic analysis of both the history and the status quo of the international legal order. Solidarity was a value they endorsed for a new international law, but unlike the famous French Interwar scholar George Scelle they completely dismissed it as a description of the past and current status quo of international law. Both Bedjaoui and Chaumont replaced Scelle's interwar socio-biological eclecticism by a highly realistic analysis of the relationship between the interests of Western economic elites and prevailing international legal structures, without giving in to determinist approaches.[117] International law could potentially become a different and less unjust international legal order with new norms re-regulating and constraining both public and private economic, military and political power. An important difference between these two approaches (Yale or Reims) can be seen in the extent to which they took into account the role of global capitalist structures in producing and stabilising inequalities. This can be exemplified by those authors influenced the 'New Haven School' who operated squarely within the liberal paradigm, such as Elias, while the more radical materialistic thinking practiced in 'Reims' and elsewhere during this time perhaps enabled writers to develop more critical voices, such as Bedjaoui.

[115] Koskenniemi, *Gentle Civilizer* (n 116) 474.
[116] On Chaumont, see Jouannet in this volume; on Bedjaoui however without emphasizing the Reims school see Öszu, '"In the interests of mankind as a whole"' (n 118).
[117] On Chaumont's legal theory and respective methodology, see Jouannet in this volume.

2. Institutions

International institutions, such as the UN or the World Bank, were important protagonists in the battle for international law too. The battle for international law led to a fundamental transformation of the post WWII institutional order. Existing institutions became themselves embattled as states from North and South were fighting to preserve or gain representation and control of them, partly turning institutional law itself, including rules of procedure of plenaries and executive councils, into a weapon. Secretariats of international institutions were also important voices and actors, in their own right, in the political and legal debates, lending legal and epistemic authority to the positions they supported. As most international institutions had been founded before the decolonization era, Third Worldcountries first had to join and often to eke out rights to equal representation and fair participation, which soon became a central part of the Third World agenda. But the newly independent states were facing different challenges in different organizations. In the UN, for example, it was not so much a question of accession and representation for the newly independent states as such, but the fact that the UN Charter had established institutional hierarchies that favoured the great powers through their status in the UN Security Council. It was, however, to the South's advantage that the Cold War's block confrontation also played out in the UN. As the Soviets blocked the work of the Security Council with vetoes, the West for a short while favoured a careful strengthening of the role of the General Assembly and its Committees.[118] Ultimately, however, the West sternly blocked all efforts to strengthen the UN GA's legislative role, by an exercise of "boundary drawing" holding that the GA was a "political" forum not a "legal" one.[119] Nonetheless GA resolutions became a powerful policy tool for the newly independent states not only through their role in discrediting colonialism and racialized white settler rule. By engaging with the UN, the Third World could advance its positions, but the institution at the same time also shaped them.[120] In international financial institutions, like the World Bank, fair representation was even more difficult – and proved ultimately elusive. Voting powers and other organizational rights in the Bank (as in the IMF and in other development banks that were created in these years) were insulated from the changes in membership. In all of these institutions, institutional law was itself an important battle-ground. The (re-)interpretation of the competences of the UN-GA or of the World Bank's executive board was instrumental in advancing the interests of one group of members – or the other.

[118] See the UN GA resolution ‚Uniting for Peace' (1950); see Sinclair, in this volume.
[119] See on "boundary drawing" above under I, and on the debate over the status and repercussions of GA resolutions in the field of international humanitarian law von Bernstorff in this volume.
[120] As Sinclair points out in his contribution to this volume

An important additional strategy of Third World countries was also to reshape the institutional landscape by creating new ones. They in particular used the UN to 'institutionalize' issue areas. A prime example is UNCTAD that provided a new arena to advance economic ideas, which would have no place in the Western dominated GATT context. The merger of different programs of technical assistance in the UNDP is another example, though the Third World's demand to establish a UN fund for financial assistance next to or instead of the World Bank failed.[121] Western states not only blocked these institutional activities but started a smart discursive counter-attack by strategically shifting the responsibility for the hot issue of "financial assistance" to newly independent states to an institution under firm Western control. A good example of such a re-shifting exercise was the creation of IDA as a soft-lending arm of the Bank that would support the Third World. Even though this was portrayed as an accommodating programmatic shift in the interest of newly independent states, it rather cemented the institutional inequality, as it actually increased the power of those states that provided funds.[122] The idea of functional specialisation and disaggregation of the Third World agenda, including the NIEO, into various policy fields and institutions was another Western counter strategy. In particular, the separation of "political" (UN) and "economic" (IFI) provided an underlying understanding that matters could be dealt with from a technical expertise-perspective without political positioning on the demands of the Third World. This provided an institutional basis for argument that would be used to delegitimize demands and ideas from TW scholars and politicians that were formulated in the 'politicized' UN, compared to the allegedly "rational" and expertise-driven financial institutions or specialised agencies.[123] In the ICJ, to gain representation was also difficult and took time, as limited positions had to be re-allocated. Considered a defender of the old European international law, Third World states nonetheless invested much strategizing and political capital into gaining a fair representation at the Court and the shock over the 1966 South-West Africa judgement only strengthened their resolve.[124] But it took till the 1970s to create an approximation of fair representation – and by then reputation and authority of the Court had already drastically decreased.

[121] See Olav Stokke, *The UN and development: From Aid to Cooperation* (Indiana University Press 2009).
[122] See Dann, in this volume.
[123] On the current role of "expertise" in creating an unjust status quo, see Kennedy, A World of Struggle, 2016.
[124] Ram P Anand, *International Courts and Contemporary Conflicts* (Asia Publishing House 1972) 320; Taslim O Elias, *Africa and the Development of International Law* (Martinus Nijhoff Publishers 1988) 51. On the role of the Court, see Venzke, in this volume.

Equally important was the second aspect, the use and stabilisation of epistemic authority. International institutions in these years gained a central position in the international system not only as fora, where states would meet, but also as increasingly autonomous actors or as indirect and effective multipliers of their principal agent's positions. International institutions took sides in the battle for international law. And surely, TW states could assume that over time membership would translate into policy orientation and hence that international institutions would eventually support their positions by advancing new law, supporting economies, creating knowledge and understanding. But as to be expected, institutional control generally translated into the substantive positioning of the respective institution. And so failure or success in gaining institutional control translated into such support or not.

IV. Conclusion

The battle for international law shaped the era situated between the Bandung Conference and the adoption of the NIEO. This transitional phase connects two long eras of Western imperialism, namely the high time of European colonialism starting with the Berlin conference in 1885 and lasting until the 1950s and the era of US-led Western hegemony, which began in the 1970s lasting until today. Within roughly three decades two thirds of the world's population were led out of direct colonial rule exercised by European metropoles. This process came with a substantial transformation of the international legal order. While Third World scholars and politicians succeeded in discrediting and delegitimising the most apparent structures enabling classic colonial rule, the Third World on balance clearly lost the battle for a new substantively reformed international law. Western states secured their victories on the various battle sites by using international legal discourse in a strategic and often highly instrumental way. One of the most effective general strategies to ensure gradual transition to a new form of Western hegemony was to block Third World initiatives of a more structural dimension and to at the same time accommodate requests for change in a highly controlled and moderate way. Various discursive manoeuvres can be observed that were instrumental in blocking a substantive reversal of the international legal order into one serving the interests of the colonized. Despite the successful politicisation of central concepts during that era, the West managed to adapt international legal structures to the new situation, in which Western states had to deal with around 100 new states, which were now formally independent countries, without losing control over the political economy of the world. It is the sum of these battles, skirmishes, counter moves and adaptations that despite of various tactical

Third World victories ultimately led to defeat in the battle for international law. By succeeding in injecting new meaning into central legal concepts and structures, Western governments could justify new forms of military, economic and political interventionism in the open-ended language of international law, preparing the ground for transformed and long-lasting North-South structures of dependency and exploitation.