

# Summary

This book explores the debate about whether established international law after World War II was binding for former colonies, the newly independent states. Third World international lawyers were confronted with the Western view that if the newly independent states wanted to play the game of international law, they had to accept its rules. International lawyers like Ram Prakash Anand from India, Taslim Olawale Elias from Nigeria and Mohammed Bedjaoui from Algeria found this ultimately unfair and a violation of Third World sovereignty – a claim that found support from the USSR which was itself sceptical about what seemed to be a law of European lineage. According to them, the new states should have the power to “pick and choose” which rules of the established international systems corresponded to their needs and only those rules were accordingly accepted by them, while other rules were not. But the Third World did by no means turn its back on international law, which it found a useful instrument to protect its newly won independence and to address its demands to the industrial states from which they wanted to gain economic support. Instead, international lawyers from the Third World believed in what might be named their “global-solidary project”: They put their hope in the UN system and the “emancipatory power” of international law which should lead to a world order oriented towards justice, solidarity, development and wealth for all as common goals of the international community. First generation scholars in the Third World wanted to change the rules from within the established system, which has been the object of criticism in the aftermath from prominent scholars from the Third World today from an ad hoc perspective.

The book traces the endeavours of the first generation of Third World scholars in the International Law Commission (ILC) and the resulting conventions in which the question of the binding quality of international law became pertinent, namely the Vienna Convention on the Law of Treaties (VCLT) from 1969, the Vienna Convention on Succession of States in respect of Treaties (VCSST) from 1978 and the

Vienna Convention on Succession of States in respect of State Property, Archives and Debts (VCSSPAD) from 1983. During the ILC's work on these treaties, international lawyers from the Third World appeared as advocates for their home countries' interests and fought against so-called "unequal treaties" concerning boundaries, other territorial regimes, concessions or acquired rights; by arguing with general principles of international law such as sovereign equality of states, self-determination of peoples and permanent sovereignty over natural resources (PSNR). During the work on the VCLT, the arenas for battles concerning the question of the binding quality of international law were the norms concerning coercion of a state by the threat or use of force (Article 52 VCLT), *jus cogens* (Articles 53 and 64 VCLT) and the principle *rebus sic stantibus* (Article 62 VCLT), whereas the topic of state succession became a battleground in its entirety (while my work is primarily focussed on Articles 11, 12 and 13 VCSST concerning boundary regimes and other territorial regimes as well as the question of why no rule about acquired rights was included in the VCSSPAD).

The Third World finally lost the battle for international law not only on the question of the binding quality of international law. One pertinent question is why: From an ad hoc perspective, its principal hope in international law may seem naïve and one may attest first generation scholars from the Third World a lack of critical reflection. From a deconstructive point of view as taken in this book, however, the battle for international law in the decolonization era did not seem that predetermined. The structure of (postcolonial) international discourse seems quite flexible. Even though Third World scholars in the decolonization period used similar argumentative methods as their Western counterparts and the very same mechanisms have been used by global North and South in a sometimes paradox manner, in the end it seemed to be the North who succeeded and the South who became marginalized. While the structure of international law would have allowed for another outcome, political and economic power did not.

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