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Decolonization as Dialectic Process in Law and Literature

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The Battle for International Law addresses the South-North contest over the content and structure of international law during the period of decolonization in the global South (1955-1975). Edited volumes are inherently risky because the quality and perspectives of the various chapters can vary widely, resulting in thematic incoherency. However, J. von Bernstorff and P. Dann have successfully assembled many excellent chapters on varied topics by a diverse range of authors. Each chapter contributes significantly to the editors' overall goal "to provide an intellectual history of the transformation of international law in the 1950s to 1970s and to offer a better understanding of the contestations to the then- dominant perceptions of order" (p. 3). The result is a must-read book for international law scholars. As a scholar and teacher of Africa in the Global Legal System, I gained much from the book. So did my students.

My contribution to this symposium focuses on Chapter 17 "Literal 'Decolonization' – Re-reading African International Legal Scholarship through the African novel" by C. Gevers. Intersecting law and literature, the chapter presents an illuminating analogy between the trends in international law scholarship and literary texts by Africans during the period at issue. Gevers revisits the familiar classification of African international law scholarship into "weak" and "strong" strands and demonstrates that a more nuanced understanding of African positions on international law emerges when one considers contemporaneous developments in African literature and their political and historical contexts. I wholeheartedly agree with this analysis.

Gevers begins with Gathii's (1998) taxonomy of African international law scholarship into "weak" and "strong" versions. Elias' works represent the "weak" version of African approaches to international law. Writing in the 1960s, Elias "emphasizes Africa's contribution to 'universal' international law and downplays colonialism [and slavery] as a negligible part of" the history of international law (p. 386). For Elias, decolonization is a literal event in which the former African colony becomes an equal sovereign state in the community of nations. Elias does not question remnants of colonialism in the content and structure of post-colonial international law and institutions, according to Gevers, which gives rise to naïve optimism about Africa's place in the international order.

Gevers contrasts the "weak" version of African perspectives on international law with the "strong" version. Umozurike, writing in the 1970s, was a proponent of the "strong" version which problematizes the colonial origins of international law itself and provides a radical critique of "Africa's subordination in its international relations as a legacy that is traceable to international law" (p. 387). For proponents of the "strong" version, decolonization is not a single event but rather a process that only begins with formal independence but must continue with a radical restructuring of

international relations. This is “a very different story of international law” than the “weak” version (id.)

Gevers suggests that the “weak” vs. “strong” classification of African international law scholarship is largely decontextual and ahistorical. Indeed, African perspectives on international law must be understood in their proper context and that context is illuminated by examining parallel intellectual developments in African literature. Elias (“weak” approach) wrote in the 1960s, at a time when African literary giants such as Achebe and Ngugi embraced the English language and the novel genre as appropriate forms for African literary expression. At the time, African writers were optimistic about their ability to “Africanize” these Western forms by subjectivizing their content. In other words, there was a strong parallel between the “weak” approach to international law and contemporaneous African writers’ pragmatic approach to colonial languages and genres. By contrast, when Umozurike (“strong” approach) was writing on international law in the 1970s, African writers had begun to critique colonial literary forms and languages. Ngugi, for example, came to believe that “the continued use of colonial languages was simply neocolonialism” (p. 393). In short, the 1970s witnessed an intellectual shift to a more radical understanding of decolonization in both international law and literature, an elevation of substance over form. African intellectuals no longer viewed decolonization as a single event but recognized it as an ongoing process of critique and radical restructuring in the spirit of Fanon.

I agree with Gevers that the “weak” – “strong” dichotomy of African approaches to international law is overly simplistic and does not consider their varied historical contexts. The “weak” scholars of international law began writing at a time (1960s) when many African nations were still under the literal yoke of colonialism. The process of formal independence had only just started. Namibia was illegally occupied by South Africa, according to numerous UN General Assembly and Security Council resolutions and an ICJ advisory opinion. Mozambique and Zimbabwe were still bound by the colonial chains of Portugal and British settlers, respectively.

As Gevers notes, decolonization is a process, a dialectic conversation. It is not a one-time event and thus Africans could not be expected to rest on the laurels of formal independence. However, as even the perennially radical Fanon noted, the first step toward liberation is formal independence. The enslaved must literally break the physical chains as the first, essential step to freedom. In the case of national decolonization, this meant fighting wars of national liberation and engaging in shrewd geopolitical diplomacy within the *existing* international order. It also included making impassioned moral and legal appeals to the UN based on legal principles the creation of which Africans were not party to (e.g., the UN Charter, the UDHR, etc.) due to their exclusion from the family of nations.

The foregoing measures, perhaps with the exception of armed struggle, were all ways of working within the status quo. However, they were not “weak” approaches; on the contrary, they were foundational and even radical for their time. Analogically applying the same logic to African literature, and recognizing that Africa was said to have no culture, no art, no history and, generally no civilization (Hegel), it was a foundational and radical maneuver for African writers to dispel these racist and

ethnocentric myths by demonstrating their mastery of the preeminent Western literary form, the English novel (see Achebe, Ngugi, etc.). Similarly, the international law that justified colonization of Africa was based on the premise that Africans are uncivilized, have no culture and therefore are incapable of being sovereign members of the community of nations (Anghie).

Perhaps instead of “weak”, then, “first generation” might be a more apt descriptor of so-called “weak” strands of African international law scholarship. But not necessarily first generation in a temporal sense, as Gevers notes, since national liberation is a non-linear and dialectic process. First generation African literature and its analogue, first generation African analyses of international law. For their time, these first generation approaches were most appropriate, as the author argues, and indeed radical. How could African nations have skipped the critical first step toward liberation?

While I don’t disagree with the central theme of the book, its general outlook seems deterministically pessimistic. Readers may come away from the book feeling hopeless about the long-term promise of the post-colonial international political and economic order for nations of the global South. What such pessimism might imply, in turn, is that the newly independent countries have very little agency in the international law arena. With this I disagree, especially concerning African nations who are exercising their legal, economic, and political sovereignty in increasingly bold and innovative ways – perhaps, the subject of a future book?
