

“‘The West’ might not exist anymore”

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2020-12-24T12:00:43

This interview is the beginning of a book symposium on [Jochen von Bernstorff](#) and [Philipp Dann](#)'s edited volume on [The Battle for International Law: South-North Perspectives on the Decolonization Era](#) (2019) that sheds light on the debates in international law between the Global South and North from the 1950s to the 1970s. The book proposes a new perspective on the history of international law, which has mostly been obscured by the focus on the Cold War.

Due to the current health situation, the interview was carried out in written form in two rounds. During the next days, review posts on selected aspects of the book will be published on [Völkerrechtsblog](#) by [Sué González Hauck](#), [Christian Pogies](#), [Sujith Xavier](#) and [Laura N. Beny](#).

Völkerrechtsblog: The decades from 1950s until the 1970s are mostly associated with the Cold War, power politics and the threat of the atomic bomb. Your book ‘The Battle for International Law’ shifts away from this paradigm and instead emphasizes the relation between the Global North and the Global South during this period. The volume proposes to reread the ‘decolonization era’ as a decisive period in international law and legal history. To this end, you and the contributors sharply contrast the interests of the newly independent states with those of the Soviet Union and the U.S.A., the two superpowers of the time. To start with, what brought your attention to this relatively new epoch and topic for the history of international law?

Jochen von Bernstorff/Philipp Dann: We both had come across the 1970s New International Economic Order (NIEO) struggles in the literature working on other projects at the time. In conversations at the Max Planck Institute in Heidelberg roughly 10 years ago, we were intrigued that the challenge posed by the first wave of scholars from the Third World during that era was much broader than the NIEO. It encompassed almost all central fields of international law at the time. And we were getting curious whether, why, and how it failed. Since 2012 we were trying to finance a workshop series on the Battle for International Law. Two applications for funding failed because reviewers inter alia thought the topic was ‘irrelevant’ for the challenges international law faced today. Thanks to the Forum Transregionale Studien in Berlin we finally managed to organize a workshop on the topic, the outcome of which is the present volume.

Völkerrechtsblog: This is a particularly interesting point that you mention here, since the considerations behind such funding decisions by research institutions often pursue their own policies and, through the activities of established reviewers, might tend to reproduce rather than question the existing traditions. What are your assessments after these ten years of experience? Do you perceive that the situation and funding opportunities for new and especially postcolonial approaches in legal research in Germany and Europe – also for PhD candidates and Post-Docs with projects in this area – is improving or are we still treading water?

von Bernstorff/Dann: It is difficult to assess the overall situation without empirical data on which international law funding proposals get rejected on which grounds. Officially most research foundations encourage scholars to submit “innovative” and “out of the box” projects. In our experience, this was the only project where we encountered problems, while on the other hand, more recent initiatives were successful. In Tübingen for example an interdisciplinary research project on “Decolonising the University” with an international law sub-project will be funded by the German Research Foundation. The cluster of excellence on ‘contestations of the liberal script’ in Berlin is openly engaging with these questions and encourages them.

Völkerrechtsblog: Your book describes not a battle *of*, but a battle *for* international law. This seems to indicate that, in the period covered by your book, international law was a contested but single discourse. Taking into account current debates about ‘comparative international law’ or backlashes against the international rule of law – are we witnessing a significant shift where this contested, yet inclusive power of international law seems to be diminishing?

von Bernstorff/Dann: International law for Third World international lawyers constituted 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 clearly dominated by Western speakers and upheld through communications of diplomats, scholars, and other institutional and individual actors. At the same time, for many of the Third World 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. It nonetheless remained one of the central problems and in a way paradoxical that the Third World saw itself compelled to fight the battle within the normative language of the colonizers, that is – within the language of international law. However, the various national approaches to international law analysed under the more recent lens of “comparative international law” also within the West existed already at the time. But the attempt to thwart the Third World challenge (and communism) in a way united most Western international lawyers in an attempt to “safeguard” the received existing “order”.

Völkerrechtsblog: The volume describes the international situation in the period between the Bandung Conference and the NIEO as a battle on multiple stages. Why did you choose the picture of the “battlefield”? Does this imply that there were hardly co-operations or shared interests between the Global North and the Global South before coming together in efforts to build, for example, common international environmental and developmental policies?

von Bernstorff/Dann: By using the battle-metaphor we wanted to take the antagonistic perspective of the contemporaries seriously. There were fundamental differences on how the global economy, war and interventions, exploitation of natural resources on land and sea and global institutions should be structured and regulated by international legal rules. The same applies to the area of development interventions, which was in theory welcomed by all sides but filled and understood in surely different ways. The same applies to environmental law, which later, in the 1970s and 1980s entered the debate for all and where the discourse soon showed similar battlelines as in the other fields.

Völkerrechtsblog: Despite the many battles that the West has won, do you think that the battles covered in your book might have laid an important theoretical groundwork and built intellectual linkages that makes the Global South of today better equipped for the battles to come? Or is, quite to the opposite, the time for thinking in ‘antagonistic perspectives’ outdated today?

von Bernstorff/Dann: These battles have surely laid an important fundament for others to build onto. The protagonists of the time developed first arguments and concepts, they also made first important experiences that are still important today and helped to prepare the ground to better understand the dynamics of the law and such debates. At the same time, the legal scholars were not an intellectually and theoretically uniform or coherent group and did not formulate a common theoretical groundwork. In this respect, postcolonial theories as they emerged since the 1970s were theoretically more important.

So, no, the time for antagonistic thinking is surely not over; on the contrary, scholarly reflections from an antagonistic perspective are still very much needed.

Völkerrechtsblog: You aim “to give the reader a better grasp of how the world became what it is today” (p. 3). How do you evaluate the battles of today’s international law and legal debates when you compare them to the battles from “back then”?

von Bernstorff/Dann: The Climate Crisis and excessive inequalities require a new Battle for International Law. That a project like the SDGs does not attempt to actively change the rules that have led to and stabilize the dire state of the world we live in today is a problem. It is an inbuilt capitulation before the status quo. At the same time, the structures of the discourse are different today. TWAIL and other critical perspectives are more prominent today and have led to intense debates about the problems of inequality and injustice and their relationship with international law.

Völkerrechtsblog: You mentioned that the West, even though not a homogeneous entity, was united by the attempt to defend the existing international “order”, or to put it more bluntly, its hegemony. If one looks at the hopes and promises of the Third World associated with the bespoken era and contrasts this with the “current depressing and desolate state [of the world]” (p. 3), one could say that the West was successful. Is the West still able to form a unit to defend its hegemony or are there today new sources of obstacles to a just world order?

von Bernstorff/Dann: Over the last forty years the West has missed out on the opportunity to promote and entrench an international legal order that would redress structural inequalities and the unfair distribution of social, economic and political opportunities between the states and communities populating the earth. It has also missed the opportunity to integrate rising powers and other protagonists into the system. Instead, the unbalanced status quo has been defended by various actors in fragmented sectorial policy- and legal fora, within and outside of international institutions. Rather than constituting a well-coordinated overall strategy, it is the result of numerous missed opportunities to engage in broader structural reforms of the global political economy and its institutional and legal infrastructure. By now, ‘the West’ might not even exist anymore and surely is in no hegemonic position to shape the system.

Völkerrechtsblog: Thank you both very much for the interesting conversation!

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