

Buchbesprechungen

Craven, Matthew/Pahuja, Sundhya/Simpson, Gerry (eds.): International Law and the Cold War. Cambridge: Cambridge University Press, 2019. ISBN 978-1-108-49918-7 (Hardback). 610 pp. £ 120.-

This is a work of mammoth ambition and spectacular results. Lodging a devastating critique of the liberal meta-narratives and ideological prejudices endemic to much of post-war international law history, this weighty volume provides a wealth of counter-narratives, methodologies and perspectives to replace this all too blinkered view of the Cold War with an alternative that is much, much richer. Collectively, the chapters upend the familiar tropes of an incipient global project of universal justice rising from the ashes of the Second World War, at first cut short only to be reborn in the 1990s with the demise of the Soviet Union (USSR), the presumed antagonist and chief impediment to progress.

The strengths of the book are manifold: First, its historiographical intervention unsettles accepted narratives and presents compelling alternatives. Second, it expands upon the recent literature published in connection with the centenary of 1917 and the 30-year anniversary of 1989, on the role of both the Non-Aligned Movement and the Communist world in the genesis of post-war international law.¹ Third, it sheds new light on well-known events and crises, while exposing previously forgotten projects, initiatives and concepts to new scrutiny. Fourth, it provides a broad and creative range of methodologically innovative approaches linking together various legal, cultural, historical and diplomatic dimensions.

The introduction to the volume by editors *Matthew Craven, Sundhya Pahuja* and *Gerry Simpson* presents a strongly argued and well-documented overview of the volume's challenge to what the authors call the "historiography of hiatus". In this common reading, the divisions produced by the Cold War meant that "no international institutional initiative could flourish, whether that be the promotion of human rights, trade, criminal justice, or disarmament". As a result "a high-minded desire and universality objective to

¹ This includes, but is by no means limited to, Luis Eslava, Michael Fakhri and Vasuki Nesiah (eds), *Bandung, Global History, and International Law: Critical Pasts and Pending Futures* (Cambridge: Cambridge University Press 2017) and two special issues of the *Journal of the History of International Law*, "A Century after Russian Revolution: Its Legacy in International Law," (19) 2, 2017 and "Revisiting State Socialist Approaches to International Criminal and Humanitarian Law," (21) 2, 2019. It also complements and involves several of the same contributors as Kathryn Greenman, Anne Orford, Anna Saunders and Ntina Tzouvala (eds), *Revolutions in International Law: The Legacies of 1917* (Cambridge: Cambridge University Press 2021).

build a stable global legal order was projected back to 1945, and then described as having been sacrificed by, and during the Cold War” (p. 2). After this period of slumber, “1989 represents a moment of release, with a re-energised collective security structure, a tribunalised trade and investment sphere, an architecture of legalised retribution and a more general shift away from a principle of non-intervention” (p. 5). Far from being a period of inactivity freezing the field of international law from soon after the Nuremberg Trials until shortly after the fall of the Berlin Wall, the introduction and the rest of the book reveal an era of immense, if often failed, stalled or incomplete, initiatives and engagement with international law from around the world, the results of which echo into the present day.

The Soviet Union is presented as a full-fledged actor in the field of international law rather than merely a foil to the United States (US) and Western Europe seeking to spoil the realisation of the liberal global order. As *Boris Mamlyuk* warns, those “who describe the relationship of the Soviet Union to international law and the Cold War as one of ‘legal nihilism’, or unmitigated *Realpolitik* run the risk of reducing a very complex phenomenon to an unsatisfactory linear narrative of self-exclusion and crude instrumentalism” (p. 374). He argues that the Soviets embraced “hard” international law in cases that allowed for “states to coordinate on discrete issues of national interest as co-sovereign/co-equal participants on the global stage” (p. 372). The leading figures of Soviet law, such as Andrei Vyshinsky, embraced international treaty-making as a tool of Soviet power, pointing back to the Treaty of Brest-Litovsk as an example of how Bolshevism could operate on the level of international law to gain recognition, guarantees, and political manoeuvrability. *Anna Isaeva’s* chapter reinforces this interpretation by rejecting depictions of Soviet legality as an outcome of simple monolithic ideology: “contradictory and curious juridical constructions were conditioned by their specific historical context which, itself, can be traced back to the national legal consciousness that underpinned those legal practices” (p. 270).

Moving from a focus on the United States and the Soviet Union as dominant superpowers, the book highlights the importance of both competing currents and challenges to the bipolar world order. Of primary importance in many of the chapters are decolonisation and the end of formal imperialism as transformative forces, but also the means by which the Cold War functioned to reinvent imperial dominance in new forms. The divide between North and South is always reinforced as a defining reality in the creation, imagination, and application of international law. *Teemu Ruskola* explores China’s efforts to liberate itself from the US-USSR model of the world by simultaneously being an outlaw state beyond the reach of law itself

and relying on the force of law between sovereign nations through prolific bilateral treaty-making.

Similar rebellions against the Eurocentric order abounded: *Charlotte Peervers* shows how Egypt's revolutionary leader Colonel Gamal Abdel Nasser sought not only to gain vital infrastructure through the seizure of the Suez Canal, but to contest the position of the United Kingdom, France and the United States as arbiters and protectors of international law. By contrast, according to *Vanja Hamzić*, Pakistan was less successful in employing law on the international stage, and its elites manoeuvred the country into a unique position as the collaborator of, and secret conduit between, the United States and the People's Republic of China – leading to perpetual crisis. Anti-colonial African movements had the greatest ambitions and also the greatest fall. *Christopher Gevers* documents the efforts by Pan-Africanists to radically reimage the geography of law by rejecting the nation-state itself after the Second World War, before being forcibly brought back into line. The case of Patrice Lumumba of Congo – and his brutal murder by American and Belgian forces – illustrates, in *Sara Kendell's* chapter, the terrible price paid by those who sought to assert their sovereignty as a nation according to the ideals of international human rights in a failed attempt to avoid choosing sides in the Cold War. *Julia Dehm's* account of the United Nations General Assembly debating the problem of debt in 1990 at the close of the Cold War reveals the durability of the economic divide between the Global North and South despite four decades of East-West conflict.

The role of the Cold War in generating new forms of law, much of it unique to the crises and technological advancements of the era, is likewise surveyed across a diverse range of fields and events. In her chapter on nuclear weapons – the most iconic of all Cold War technologies –, *Anna Hood* makes the case for the Cold War as one of enhanced legality over the post-Soviet politics of nuclear arms which became comparatively more about power politics. While law was central to regulating the superpower rivalry, it also created a “space for resistance to the Great Powers of the day and allow[ed] divergent ideas to come to the fore on the international stage” (p. 99). The international fight over the legality of the Berlin Wall – the most iconic of all Cold War borders – served as a symbol of the universal right to freedom of movement both in the West and in the Global South. Yet, as *Sara Dehm* deftly argues, this contrasted with the particularistic reading of the rights of citizens, particularly the highly skilled and educated, from developing countries, whose freedom to emigrate was widely claimed to be limited by their own states due not only to their position as agents of development and modernisation but also the threat of a “brain drain”. In other areas, the Third World was able to shape the global international legal order by taking control

of the United Nations system in the 1960s. As *Upendra Baxi* argues, this allowed post-colonial countries to centre the problem of self-determination against the resistance of the West and to develop new human rights norms such as the right to development, even if more ambitious programs such as the New International Economic Order were ultimately unsuccessful.

Far from being constrained to the era of the Cold War itself, several authors contend with the long-term impact of legal innovations and initiatives that can trace their roots back to this period. *Fleur Johns* traces the emergence of “data shadows” – the use of signals intelligence and electronic data gathering as part of international law – to 1964 with the detection of China’s first fission bomb detonation and the Gulf of Tonkin incident, which formed the legal basis for American escalation in Vietnam. As she argues, “the techno-legal innovations of the Cold War ushered in an international legal order in which decision-making on legal issues often entailed engaging, and giving effect to, human-nonhuman approximations of action and intent on the part of states and other actors” (p. 157). Cold War legal instruments such as the Korean War armistice remain relevant today, albeit in a form evolved from their original state. Similarly, *Treasa Dunworth* points out that the Landmine Convention – seen as the quintessential post-Cold War international legal agreement, had its roots in deliberations surrounding the Vietnam War and the Non-Aligned Movement’s drive to revise the Geneva Conventions to consider wars of liberation under international humanitarian law. *Carmen G. Gonzalez’s* chapter situates the current American reticence to commit to international environmental law in the longer history of the Cold War, when “human rights activists were branded as traitors and subversives who threatened the country’s prestige in the eyes of the Third World” (p. 254).

The volume also demonstrates how issues of international law were entangled with both domestic politics and the legacies of imperialism. The Soviet Union’s opposition to international legal norms against forced labour was directly tied to its brutal domestic security apparatus and became part of the process of dismantling the Gulag under Nikita Khrushchev. At the same time, as *Anne-Charlotte Martineau* shows, under the post-war legal framework put forward by the International Labour Organisation (ILO), “imperial subjects remained exempt from any new normative measure intended to improve their conditions and abolish forced labour” (p. 282). Pakistan’s international intrigues are explained as a function of the unresolved domestic class politics that emerged from partition in 1947. Nasser’s international claims are inextricable from his dual revolution against global colonialism, but also his domestic agenda for social transformation and modernisation through military leadership. International law itself was not just a proxy or

vehicle for domestic conflicts, but also came to serve as a vital space within domestic politics – as *Madelaine Chiam* demonstrates in her chapter on Australian debates about the legitimacy of the Vietnam War.

Other chapters take a more theoretical and conceptual approach to the era as a whole. *Richards Joyce* uses the theological concept of the *Katechon* – the restrainer – to pull together the ideas of Carl Schmitt, Hans Morgenthau, and Walter Benjamin and question the messianic and teleological meta-narratives and structures behind standard historical accounts of international law. Originally a term for describing the forces that restrained the return of the Messiah in Christianity, the *Katechon* was adopted by Schmitt to label the evolving international order holding back chaos and lawlessness. The danger of the Cold War was the absence of a *Katechon*, replaced by two opponents seeking the total destruction of the other. For Morgenthau – and much of international law historiography – however, the superpowers were themselves the restrainers holding back not the return of Christ, but the realisation of the universal potential of international law. By contrast, *Joyce* offers the reader Benjamin's concept of history, which eliminates the *Katechon* with its rejection of an ultimate destination, in exchange for a present containing within it a "weak messianic power" that generates a revolutionary chance and "renders impossible the fixed utopic visions of liberal international lawyers" (p. 47). *Scott Newton's* chapter moves from time to the concept of "Division Space" as an organising structure that epitomised both the division of the Cold War and the universal aspirations of international law. The ideological conflict between the superpowers meant that "the world now existed in parallel, specular, rival versions or visions" that resulted in a geographical splitting of cities, countries, and continents (p. 118). Yet, there were sites where these two worlds bled into one another: Certain spaces existed uneasily on both sides of the Cold War divide, such as Berlin before the construction of the Wall or a room in the St. Theresa Hotel in Harlem during a meeting of Fidel Castro, Nikita Khrushchev, and Malcolm X. The problem of development in the Third World came from a proliferation of Division Space across the Global South as the superpowers vied to see their vision of modernity realised in the wake of colonialism.

One of the more refreshing elements of the book is the widespread engagement with law and literature methods and a wider interest in employing the arts to illustrate and elucidate broader points about law, decolonisation and geopolitics. *Ruth Buchanan* uses the 1959 nuclear apocalypse film *On the Beach* to explore how debates on the morality and legitimacy of the bomb translated into mass culture. Outside of these studies, however, literature forms a vernacular in many of the contributions: Nasser's theatrical staging of the Suez Canal seizure is related back to the Colonel's interest in

the work of Italian poet Luigi Pirandello. *Scott Newton* relates his concept of division space through an evocation of the intertwined metropolis of Beszel/ Ul Qoma from *The City and the City* by China Miéville (himself a scholar of Marxism and international law). *Tony Carty's* chapter on the literature of John le Carré uncovers the author's underlying philosophy of international law as the reliable pole of humanism contrasted to the betrayal, deception, and moral defeat experienced by those engaged in clandestine intrigue. *Sara Kendall* offers a rebuttal to this vision in exploring Patrice Lumumba's assassination as an illustration of "international law's false promise of post-colonial sovereignty, premised as it is upon a break from the past colonial order", herself employing the fictional work by Aimé Césaire and the documentary filmmaking of Raoul Peck to convey the sense of the murdered Congolese Prime Minister as a spirit haunting the dream of post-colonialism in the Cold War era and beyond (p. 557).

It must also be mentioned that there are some minor flaws: a few of the chapters are less than fully developed in contrast to the stronger entries. In spite of the geographic diversity of entries, there is no coverage of Latin America, nor of Eastern Europe outside the Soviet Union. Similarly, for a volume of this scope a more substantial index with a greater emphasis on conceptual connections would not have been remiss. These seem like missed opportunities. That being said, there is only so much that can be explored in a single volume. This is a rich and multifaceted work, which deserves a wide audience and is sure to spur on further research for years to come.

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