Book Review: Sixty Years after Independence, Africa And International Law: Views from a Generation

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Introduction

This long-awaited book provides a fresh view of how international law is forged, implemented and practiced in Africa, offering a global vision of the position that the African continent presently occupies in the international legal order.

In addition to some contributions by European authors, the book mostly gathers young African scholars (including the editor, one of the most promising African international lawyers of our times) who consider different aspects of international law. The contribution of postcolonial Africa to international law is unquestionable and African states have been active participants in strengthening existing rules of international law as well as developing new ones through the adoption of conventions that work to either supplement existing global instruments with commitments specific to the African context or establish the African commitment to new norms with potential global application. In the words of Abdulqawi Yusuf quoted in Tiyanjana Maluwa (p. 412): “The application, interpretation and creation of international law by regional organizations and regional courts are likely to provide a key impetus in the development and evolution of international law”.

Contributions published in this book are in English and French, which displays the diversity and the inclusion that Africa is aiming at, also from a legal point of view. This dual language (both languages being official languages of the African Union –AU-) also reflects the different approach by the authors, several with an academic education closer to an English common law-inspired legal system while others closer to a French-inspired legal system.

The book is divided into four parts, each of them investigating a main, broad topic. The first part (chapters 1-2) is dedicated to questions on the possible existence of an “African international law”, a topic around which the debate, above all among African scholars, does not seem to have reached a final conclusion accepted by all. The relevance and the unifying theme of this part is due to the fact that the authors of the two chapters, in spite of the fact that they want to impel the African continent into universality (to find a balance between the specificities of international law in Africa and the universal values it promotes is often arduous) advocate two different approaches, that we will analyse later in this review. The second part of the book (chapters 3-7) is dedicated to the important contribution that the African continent makes to the progressive development of international law. Yet, this role of African scholars in contributing to the development of international law has not always been recognized, as demonstrated, for example, in chapter 6 concerning the right to development. The third part of the book (chapters 8-10) investigates the challenges of international investment law in Africa. In these chapters the

authors highlight the increasing mistrust of African countries towards the present mechanisms of dispute settlement, especially arbitration.

On the other hand, the authors advocate the promotion of the Pan-African Investment Code (PAIC) that is the first continent-wide African model investment treaty elaborated under the auspices of the AU. The PAIC has been drafted from the perspective of developing and least-developed countries with a view to promoting sustainable development. Finally, the fourth part of the book (chapters 11-15) analyses how, in several fields of international law, such as the protection of human rights as well as regional integration, African legislators have "africanized", that means going beyond to a simple work of "copy and paste", the global and other regional models and institutions, adapting them to the specific context of the African continent. In this sense, however, as analysed in chapter 14, according to its authors the African Court on Human and Peoples' Rights (ACtHPR) is not yet an effective attempt to allow African citizens to have access to an institution guaranteeing their fundamental rights.

Analysing in more detail the "introduction" to the entire work (chapters 1 and 2), I certainly agree with the author of chapter 1 (Dr Apollin Kouagne Zouapet) when he affirms that: "Africans and Africa states have a philosophy, a specific vision of international law that should be taken into account for the emergence of a truly universal international law" (p. 5). Yet, for many scholars, such as Christo Botha, African philosophy is rooted in the traditional belief systems of African ethnic and linguistic groups. This means that anthropology, not philosophy per se, has been the first source of African philosophy (even among indigenous scholars), as it articulates and analyses local thought. In the 1988 edition (second edition revisited, first edition published in 1972) of his book " Africa and the Development of International Law" Taslim Olawale Elias helps in clarifying the historical background of international law in Africa. He traces the long contact between Asia, Europe and Africa, showing that African states at various times in history played an important role in international relations (p. 3-15). Elias' conclusion is that the centuries of contacts that African peoples had among themselves and with civilizations beyond Africa have resulted in a "certain measure of common experiences in international living". Elias finds that the similar economic and political conditions in African societies have resulted in "a universal body of principles of African customary law that is not

essentially dissimilar to the broad principles of European law" (p. 43).

While Dr Zouapet correctly mentions Jakob Zollman who, in 2018, wrote that "neither librarians nor Google can find a single entry for a *jus gentium africanum*" (p. 898) I am, however, wondering if this expression cannot be found because, perhaps, it is a Latin expression, language mostly used in Europe while Africa could have developed a similar system that has been passed on customarily or in a non-Latin and/or lost idiom?); he also makes reference to the 2015 article by Jeremy Levitt that, in fact, finds an "African international law" that dates back way before to the European tradition that has infused Africa during the period of colonialism. Yet, as specified by Dr Zouapet at p. 10 of the chapter he authored, his contribution, following the idea of the "unity of international law" (what Joost Pauwelyn defined in 2004 as a "universe of inter-connected islands") focuses on "African approaches to international law" rather than to the idea of an "African international law".

Far from considering a "regional approach to international law" (RAIL) as dichotomous to the concept of the "universality" of international law, Dr Zouapet rather considers the RAIL as a constructive contribution "in a collective approach to the development of consensual and universal international law" (p. 19). This concept is reiterated at p. 21 where the author highlights that the search for an "African approach" to international law should be considered by the academic world, but also by the international community at large, as an instrument to "refine and enrich" international law. Not by chance the acceptance of a regional (African) approach to international law can make possible the acceptance and the harmonization of differences at the supra-regional level in order to make a work of synthesis of the different views and to better shape those shared values that should necessarily be at the foundations of a law that can be acceptable (and accepted) at the international level. In this context, the identification of an "African approach" to international law is also useful for what the author indicates as the "eternally colonised" to participate "at the establishment of international institutions more adapted to their interests and political choices" (p. 26).

It is true, however, that if RAILs are essential to "break the chains" of the hegemony of international law as a jus europaeum on the other side, however, it is not always so simple to cope with the diversity of positions while trying to

preserve the unity of international law. Moreover, as Dr Zouapet recognizes (p. 33) an “African approach” to international law necessitates not only agreement among the 54 African sovereign states, already not an easy task because of the different customs and legal (and non-legal) traditions of the states.

On top of that, also the views of different non-state actors (NSAs), such as transnational firms and non-governmental organizations (NGOs) need to be taken into consideration, given that also these NSAs, in Africa, are entitled to influence decisions that, in their turn, can contribute to “carve” the law. After that, I also find pertinent the observations made by Dr Zouapet at p. 38 when he is wondering what makes an international lawyer a “source of inspiration” for the African approach to international law. Humbly putting myself aside, I have in mind several non-African scholars who have devoted a substantial part of their research to African legal studies and who are widely cited as “experts of Africa”, although they do not hold an Africa passport nor they have lived a substantial portion of their life in Africa (contrary, for example, to Prof Magnus Killander). I am thinking, for example, of Prof Rachel Murray, Prof Konstantinos Magliveras and Dr Gino J. Naldi, whose scholarship has certainly contributed to build an “African approach” of international law. These personalities need to be coupled to the hundreds of African scholars who, both if they reside in Africa or outside the continent, have dedicated huge parts of their research to develop an “African approach” to international law.

However, as highlighted by Dr Zouapet at p. 43, if it is the responsibility of “African international lawyers to contribute to the enrichment of international law by using traditions, learning and wisdom from Africa” it is clear that African scholars (or non-African scholars living for a substantial portion of their life in Africa) should be preferred to non-African scholars not living in Africa as “more qualified” teachers and researchers of an African perspective of international law.

I think that a big hand to the affirmation of a scholarly African approach to the international law can also be provided by the African Union Commission on International Law (AUCIL), that pursue a number of objectives aiming at making the African contribution to the development of international law more crucial and specific to the African reality. Further, in his chapter, Dr Zouapet reflects on the expansion of topics that will be of competence of the future African Court of

Justice, Human and Peoples' Rights, highlighting how African regional law is gradually attributing a crucial place to aspects of governance and democracy within African states. The adoption (by the AU) of the 2007 African Charter on Democracy, Elections and Governance goes in the direction traced by the AU to overcome the criticism addressed in the past to the Organization of African Unity (OAU) for drafting conventions that were aiming more to an ideal world than concretely adhering to the African reality.

The author concludes his chapter mentioning several examples of African approaches to international law that are in opposition to what the global law stipulates on the same topic. The abovementioned PAIC constitutes a clear illustration on how Africa is opposing the interests that are detrimental to the most disadvantaged state entities on earth. PAIC certainly constitutes a contribution to the development (although for some non-Africa international law schools can represent a regression, instead) of international law by the African approach.

Finally, in its conclusions, Dr Zouapet highlights two crucial weaknesses of the African approach of international law (p. 53): 1) states, essentially within the framework of regional organizations, are still the main formulators of the African approach of international law. Unfortunately, they do not convey their message properly yet and this entails that international lawyers in Africa are still struggling in teaching and practicing this continental vision; 2) African jurisprudence is still fragmentary on many aspects of international law as well as the practice of African states is, without counting the fact that the preparatory works of many conventions adopted at the African level are not published and, as such, the real intentions of the drafters in adopting several (many) articles of those conventions is still not 100% clear (one example of this kind is given by the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa -1969 OAU Refugee Convention-).

In chapter 2, Dr Firmin Ngounmedje and Dr Carole Valerie Nouazi Kemkeng also reflect on the existence of an "African international law", outlining the importance of the "codification" of the "African law" through some African institution that is able to implement the legal topics deserving to be "africanized" with the elements of pan Africanism and the regional integration superseding on this phenomenon of "africanization" of the law.

The authors insist on a binary logic (p. 61) by which, on one side, we have an "African international law" deriving from the "internationalisation of the concerns" of the African continent while, on the other side, the "African international law" would derive from the internationalisation of specificities of Africa. Against this backdrop, the authors (p. 65) stress the fact that the "universal law" has often ignored the legal instances originating from Africa and this attitude has entailed the reaction of the African institutions that, as also highlighted by Dr Zouapet in the previous chapter, have started to elaborate new legal instruments, particularly in the domains of governance and of economic issues.

However, the authors, as a development of the "African international law" also mention the 2006 African Youth Charter, that is the first international legal instrument completely dedicated to the particular social category of "youth". In the framework of the "African concerns" that play a decisive role in the formation of an "African international law", the authors also stress the peculiarity of the African system of human rights. In this regard, the authors highlight what they define a "floraison normative" ("normative blossoming", p. 71) in this particular legal domain contributing, through the adoption of a number of conventions, to the creation of what the authors call "an international law specifically African" (p. 72). As the reader has understood, in this way, the conception of the authors differs from the "African approach to international law" that was at the foundation of the reasoning by Dr Zouapet in chapter 1. In paragraph 3 of chapter 2 the authors analyse in greater depth the question of the "internationalisation of the concerns" and take as an example the 2015 UN Framework Convention on Climate Change, that has been ratified by a good number of African states. Yet, on the other side, the authors highlight that the specificities of the "African international law" are clear from the adoption, by the international community, of several practices that the African states have put in place. In this regard, the authors make reference to the " broader definition" of a refugee contained in article 1(2) of the 1969 OAU Refugee Convention and to the 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa that, to date, is the only international legal instrument on this topic that is binding for its parties.

Finally, it is really thanks to these two tracks (internationalisation of the concerns and promotions and protection of African legal specificities) that, according to the authors, we are in presence of a veritable “African international law”.

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