

SYMPOSIUM ON THE BANDUNG CONFERENCE AT 70: INTERNATIONAL LAW'S MANY THIRD WORLDS

BANDUNG BETWEEN CIVILIZATIONAL EQUALITY AND NATIONAL LIBERATION

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Introduction

We remember history through our own national identities, and recollections of Bandung are no exception in that respect.¹ Colonialism's "illegitimacy" had many meanings for the twenty-nine countries that joined the 1955 conference. Countries like China and Japan in Northeast Asia and ancient kingdoms in Southeast Asia like Thailand sought civilizational equality during the colonial era. China has since recovered territory such as Hong Kong which it sees as having been acquired through unequal colonial era treaties,² but elsewhere in Asia and Africa Bandung became a declaration of liberation instead. Today, however, there is a tendency to circumvent the complications of these historical differences when advancing a unitary understanding of Bandung's Final Communiqué.³ This essay uses the example of North Borneo and juxtaposes that against well-known Chinese views in returning to a theme I have explored elsewhere.⁴ It argues that while some Bandung nations might find it undesirable to reject every incident of their European creation, others might simply treat all of colonialism's acts as illegitimate.

Unity Amidst Different Pasts

At the heart of the Final Communiqué are five principles which are also reflected in the UN Charter.⁵ They are the principles of self-determination, mutual respect for sovereignty, non-aggression, non-interference in the domestic affairs of other states, and sovereign equality. For many international lawyers the precise legal meaning of these principles is what matters rather than the different meanings that different Third World countries might attach to them in light of their different national histories. Yet our usual doctrinal preoccupations, such as whether non-intervention requires coercion, leaves room for other kinds of diverse state practice. While

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¹ James V. Wertsch, *HOW NATIONS REMEMBER: A NARRATIVE APPROACH* (2021).

² See further C. L. Lim, *TREATY FOR A LOST CITY: THE SINO-BRITISH JOINT DECLARATION* (2022).

³ Luis Eslava, Michael Fakhri & Vasuki Nesiah, *The Spirit of Bandung*, in *BANDUNG, GLOBAL HISTORY AND INTERNATIONAL LAW* 3, 6 (Luis Eslava, Michael Fakhri & Vasuki Nesiah eds., 2017).

⁴ See further generally C. L. Lim, *The Aims and Methods of Postcolonial International Law*, 437 RECUEIL DES COURS 9 (2024) [hereinafter Lim, RDC]; C. L. Lim, *THE AIMS AND METHODS OF POSTCOLONIAL INTERNATIONAL LAW* (2024) [hereinafter LIM, AIMS AND METHODS].

⁵ UN Charter, Arts. 1, 2(4), 2(7).

sovereignty and non-interference could mean not upsetting past colonial arrangements, it could also mean the recovery of territory lost through colonial treaties. What resulted in Bandung, by using these Charter principles, was a unifying Third World-ism which masked the distinct gloss given by different nations to the Charter principles.

We could interrogate the display of Third World unity through the juxtaposition of two different colonial encounters, one in China and the other in Borneo. Doing so has consequences for the “romantic” reading of Bandung⁶ as a “genuine moment of opening and breaking free from the trappings of the past.”⁷ The problem with that view is that it imagines that Bandungites could simply remake all of international law through a performative regurgitation of the Charter’s principles, without needing to wade into the murky waters of the past.⁸

Admittedly, there were attempts to be more nuanced. Third World lawyers came close to taking a historical turn, one that is different from today’s scholarly imaginings of a pre-colonial, or post-Occidental, international law shorn of Europeanization. Take the International Law Commission at its ninth session in 1957.⁹ There, Luis Padilla Nervo pointed out that while the new states had not engaged in lawmaking prior to achieving statehood, the existing rules were acceptable where they were not inimical to them; the law of state responsibility, however, was in fact inimical to the Third World and needed to be changed. Radhabinod Pal also rejected the traditional rules of state responsibility because the right of a state to protect its own nationals is not absolute. In Pal’s words “in Asia, the end of the First World War had touched off the latent impulse of a gigantic force” and “international law was no longer the almost exclusive preserve of the peoples of European blood.” Ahmed Matine-Daftary also spoke, and said that the special rapporteur should have held fast to the perfectly defensible Latin American view which would have had domestic law, which governs the rights of nationals, govern the rights of foreign nationals too. Abdullah El-Erian was blunt and referred to two regrettable trends: (1) the diplomatic and commercial rights granted to Western powers in the past; and (2) making the rights of aliens a pretext for intervention in the domestic affairs of states.¹⁰

Yet if Bandung was mostly a simple rehashing of Charter principles, why do we have all this lyricism about Bandung today? The answer is that, quite aside from the needs and mechanics of Third World solidarity, Bandung has at least two further, competing, planks of meaning. The first has to do with the inviolability and permanence of the post-colonial state, and the second with the idea of a civilizational equality with Western European states.

The Inviolability and Permanence of the Post-colonial State

Many post-colonial states adhere to the *uti possidetis* doctrine and demonstrate fidelity to the idea of an unproblematic territorial succession from the colonial to the sovereign stages of emancipation. Bandungian

⁶ Rose Sydney Parfitt, *Newer Is Truer: Time, Space, and Subjectivity at the Bandung Conference*, in [BANDUNG, GLOBAL HISTORY AND INTERNATIONAL LAW](#), *supra* note 3, at 49.

⁷ Adil Hasan Khan, *Ghostly Visitations: “Questioning Heirs” and the Tragic Tasks of Narrating Bandung Futures*, in [BANDUNG, GLOBAL HISTORY AND INTERNATIONAL LAW](#), *supra* note 3, at 108, 111.

⁸ C.L. Lim, *Neither Sheep Nor Peacocks: T. O. Elias and Post-colonial International Law*, 21 LEIDEN J. INT’L L. 295 (2008).

⁹ Where F.V. Garcia-Amador of Cuba’s second report on state responsibility for injuries to aliens and their property was discussed.

¹⁰ All of these statements were rejected by Sir Gerald Fitzmaurice. See Y.B. I.L.C. 1957, Vol. 1, Summary Records of the Ninth Session, 23 April–28 June 1957, 155 (Padilla Nervo), 157–58 (Pal), 159–60 (Matine-Daftary), 161 (El-Erian), 163 (Fitzmaurice).

self-determination¹¹ does not ask hard questions about the newly emergent post-colonial state's territorial entitlements. Rather than question pre-colonial legislative acts of territorial acquisition, the new Afro-Asian states generally preferred to simply accept them. To do otherwise would have opened the door to their own legal destruction. Irredentism and secession were the “plagues of the developing world.”¹²

Let me illustrate this with a recent dispute between Malaysia and claimants claiming as the successors of the ruler of the now defunct Sultanate of Sulu. The dispute concerns an 1878 instrument of grant and cession (Deed) entered into between the Sultan and the founders of the British North Borneo (Chartered) Company (Company).¹³ The territory is now a part of Malaysia, following succession to British title acquired through the Company transferring the territory to the Crown by an agreement dated June 26, 1946.¹⁴ Prior to that, the territory was a British protectorate, following a Protectorate Agreement signed by Lord Salisbury and the Company on May 12, 1888.¹⁵ Interestingly, in that same year the *Institut de Droit International* rejected a proposal that (1) “protectorates” may subsequently be absorbed into the protecting state, and (2) territory not already under the control of a European state should simply be considered legally uninhabited.¹⁶

In the 2022 *Sulu* arbitration, the claimants relied squarely upon the validity of the 1878 Deed as a mere private lease while contesting the British and Malaysian view that it represented instead a cession of the territory.¹⁷ In its final award, the Tribunal agreed with the claimants that the 1878 Deed in fact was an ordinary commercial lease, having determined in its earlier jurisdictional award that the UNIDROIT Principles of International Commercial Contracts supplied the governing law.¹⁸

Malaysia as the successor sovereign contests the Tribunal's characterization of a long-established cession as nothing more than a commercial contract. Malaysia denies that the dispute is susceptible to settlement by international commercial arbitration at all, said that this was a sovereign matter, and claims state immunity. For its part, the Tribunal decided that since the territory could hardly be restored to the claimants it would order damages representing the value of the loss of the territory and the oil resources since discovered, including loss of profits. All this amounted to an unusually large sum, in effect representing the monetary value of a modern-day cession. Malaysia for its part has sought to have the award set aside, and has challenged its enforcement successfully in several jurisdictions.¹⁹

If we apply Bandung to this context, Malaysia's invocation of its sovereignty, rather than being the usual Third Worldist call for colonial reparations, emphasizes instead the right of self-determination of a newly independent nation and a post-liberation sovereign *domain réservé*. More importantly, it upholds the colonial era agreement. So much for not being wed to the incidents of colonialism. The *Sulu* arbitration is also an example of how the

¹¹ [Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem](#), Request for Advisory Opinion, [Verbatim Record](#), UN Doc. CR 2024/9, paras. 12–19 (Statement of Ma Xinmin (China)) (ICJ Feb. 22, 2024) [hereinafter Statement of Ma Xinmin].

¹² Caroline Thomas, *Challenges of Nation-Building: Uganda-A Case Study*, 41 INDIA Q. 320 (1985).

¹³ Nurhima Kiram Fornan and ors v. Malaysia, [Final Award](#) (Feb. 28, 2022).

¹⁴ [Agreement for the Transfer of the Borneo Sovereign Rights and Assets from the British North Borneo Company to the Crown](#), June 26, 1946.

¹⁵ [North Borneo Company, Agreement, British Protectorate Over the State of North Borneo](#), May 12, 1888, TNA/FO9316/5.

¹⁶ A. Rivier, *Extrait du procès-verbal de la séance plénière tenue par l'Institut, à Lausanne, le 7 septembre 1888, sous la présidence de M. Rivier*, 10 ANNUAIRE I.D.I. 176 (1888–1889). For a discussion, see [Lim, RDC](#), *supra* note 4, at 25–26, 39; or [Lim, AIMS AND METHODS](#), *supra* note 4, at 18–21, 39.

¹⁷ [Nurbima Kiram Fornan](#), *supra* note 13, paras. 186–209, 244.

¹⁸ Nurhima Kiram Fornan and ors v. Malaysia, [Preliminary Award on Jurisdiction and Applicable Substantive Law](#) (May 25, 2020).

¹⁹ For these and other documents, see [Press Release of Malaysia on the French Supreme Court Decision in Sulu Case](#) (Nov. 7, 2024).

cobbling together of diverse ethnic and religious groups to form the newly independent nations of Asia and Africa, led by the example of India, has led to distinct challenges. Not all of these were as dramatic as the Nigerian Civil War, Indian partition, or the separation of East from West Pakistan. Hyderabad, for example, employed a stellar cast of international lawyers to advance its cause at the United Nations Security Council. Professor Saksena has mentioned the complex imperial legal theory which permitted the princely states ruled by Maharajas, or the Nizam of Hyderabad, to claim that they were sovereign in tandem with British sovereignty.²⁰ The Nizam asserted this claim with Hersch Lauterpacht and the London firm Coward Chance advising him on the matter.²¹

Bandung is often supposed to mean that it is unthinkable for any within the Bandung fold to question the inviolate borders and territories of a fellow Bandung declarant.

Civilizational Equality

There is however a second, competing way of understanding Bandung in which it becomes an assertion of sovereign equality going back to colonial times, as in the case of East Asia's ancient kingdoms. In China, which was not formally colonized, the spread of modern international law there became intertwined with a nineteenth century public discourse centered upon Chinese assertions of unequal treaty treatment. According to Wang, "[t]hroughout the nineteenth century, the term . . . *bupingdeng tiaoyue* [unequal clauses in treaties] was apparently not used by the Chinese. However, related concepts such as sovereignty, reciprocity, tariff autonomy, and extraterritoriality were gradually taken up."²² A fixed tariff rate for foreign goods of 5 percent *ad valorem*, immunity from local laws, and most favored nation treatment for foreign powers were then the public issues of the day.²³ Such nineteenth-century concerns would have shaped Chinese perceptions of doctrine long before the corresponding Charter principles asserted at Bandung.

Let us take by way of a further example a specifically Chinese understanding of "non-interference," which Seppanen and Smith say is distinguishable from the UN Charter doctrine of non-intervention. The Chinese notion of "non-interference" preceded the Charter's sovereign equality doctrine and UN General Assembly resolutions such as Resolutions 2131 and 2625, which sought to flesh out a non-intervention doctrine linked to the pursuit of self-determination. The Charter doctrine as we know it requires the existence of some element of coercion while "non-interference" is sometimes used as a Chinese shield against Western criticism.²⁴

In "China's Bandung," China had not won post-colonial independence, nor was it in need of liberation from colonial rule. Rather, China demanded recognition as a European equal. Chinese international lawyers in the early twentieth century called for the law of armed reprisals to be outlawed,²⁵ and for China to be admitted to the community of the law of nations²⁶ precisely in order that China might lay to rest its unequal treaties. Here, the logic of sovereign equality and the campaign to defeat treaty inequality are but opposite sides of the coin.

²⁰ PRIYASHA SAKSENA, *SOVEREIGNTY, INTERNATIONAL LAW, AND THE PRINCELY STATES OF COLONIAL SOUTH ASIA* (2023).

²¹ See ELI LAUTERPACHT, *THE LIFE OF HERSCH LAUTERPACHT* 312 et seq. (2011).

²² Dong Wang, *The Discourse of Unequal Treaties in China*, 76 PAC. AFF. 399, 401 (2003).

²³ *Id.* at 401–02. This was not unique to China, see, e.g., Masahiro Miyoshi, *International Law in the Modern History of Japan – A Brief Description*, 136 HOKEI RONSHU 1 (1994).

²⁴ See Samuli Seppanen & Ewan Smith, *The New Chinese Doctrine of Non-Intervention*, 74 INT'L & COMP. L. Q. 377, 378 (2025). Having said this, the Chinese notion of non-interference may not be so unusual to the layperson, see, e.g., Connor Murray, *German Chancellor Scholz Appears to Rebuke JD Vance in Speech, Slams "Outsiders Intervening in Our Democracy,"* FORBES (Feb. 15, 2025).

²⁵ See, e.g., Wéi Tchéou, *Observations de M. Tchéou-Wei. Genève, le 21 mars 1926*, 33 ANNUAIRE DE L'INSTITUT DE DROIT INTERNATIONAL 515, 517 (1927).

²⁶ See RYAN MITCHELL, *RECENTERING THE WORLD: CHINA AND THE TRANSFORMATION OF INTERNATIONAL LAW* Ch. 5 (2022).

China's concerns in the 1920s about achieving the right to establish customs duties without external interference, and its concerns about treaties that granted extraterritorial rights to foreign nations and their nationals were different from those of many other Asiatic or African states. This does not mean that the Chinese official position is not also allied with the Afro-Asian liberationist perspective. For example, the Chinese president in his 2015 Asian-African Summit speech laid emphasis on the Afro-Asian experience of national liberation and hard-won independence.²⁷ China's recent statement in the context of the Advisory Proceedings in *Israel's Occupation of the Palestinian Territories* also shows their ongoing alliance.²⁸ At the same time, in the context of the recent celebration of the sixtieth anniversary of Bandung, the *China Daily* published a piece proclaiming that "Beijing promotes exchanges and mutual learning among civilizations, moving beyond Western-centric values."²⁹ China's "internalised vision" of Bandung, if that is how we can phrase it, and without over-reading this distinctive attribute,³⁰ is shaped by a distinctive horizon of meaning and significance.

Conclusion

In sum, many independent nations' perspectives have been shaped by colonial agreements and understandings. These still are relied upon today to settle territorial and other differences. Absent a legitimate colonial act the territorial entitlements of many post-colonial states would be called into question. On this view, a nineteenth century document from Borneo that speaks of the transfer to the owners of a chartered company and "their successors and agents" is a document governed by English Law, which automatically recognizes British post-colonial arrangements. Hard questions about "unequal treaties" do not feature. However, to the Chinese, a facially similar colonial instrument such as the Treaty of Nanjing or the First Peking Convention would be an "unequal treaty." Here the state's identity in international law is not bound up with prior colonial acts. Instead, that identity precedes colonialism.

Bandung taken as a point of convergence masks genuine divergences. Colonial agreements may be contested by some as unequal, or even unimportant, yet many post-colonial states will find it difficult to reject the fact of their European creation. Many would treat the moment of decolonization and independence as if their sovereign rights, including their territorial rights, emerged suddenly from some kind of Immaculate Conception. Yet such territorial rights often were acquired in bits and pieces through colonial agreements. In comparison, China adopted a different strategy of renouncing "unequal" treaties while leaving current territorial arrangements intact awaiting redress only at an "appropriate time."³¹ The clearest example was the return of Hong Kong to Chinese rule. These historical differences are glossed over in high-level Chinese statements; for example by referring to a shared commitment to "national liberation" or "liberation of peoples" as a more general unifying concept, and it indicates perhaps Chinese official awareness of potential differences amongst the Bandung countries which require the construction of points of convergence.³² Yet we need to pierce through the unitary representations of Bandung to see how delicate it all is.³³

²⁷ Ministry of Foreign Affairs People's Republic of China Press Release, *Carry Forward the Bandung Spirit of Win-Win Cooperation* (Apr. 22, 2025).

²⁸ Statement of Ma Xinmin, *supra* note 11, paras. 12–19.

²⁹ Jia Zhao, *China Rejuvenating the Bandung Spirit for Global Goo*, CHINA DAILY (Apr. 17, 2025).

³⁰ Cf. Prabhakar Singh's contribution, in this symposium.

³¹ See Lim, *supra* note 2, at 19–20, 23, 60–64, 115 (discussing Huang Hua's 1972 letter to the Committee of 24, and Wu Xueqian's 1984 report to the National People's Congress, regarding Hong Kong).

³² Ministry of Foreign Affairs People's Republic of China Press Release, *supra* note 27 ("galvanising the national liberation movement that swept across Asia, Africa and Latin America"); Statement of Ma Xinmin, *supra* note 11, para. 36 ("liberation of peoples").

³³ ROLAND BARTHES, MYTHOLOGIES 11 (1993).