(as imagined in John Adams's opera *Nixon in China*), the exchanges between Josip Broz Tito and Jawaharlal Nehru in Delhi, Bandung, and Belgrade; and the correspondence between Fidel Castro and Nikita Khrushchev.

The final chapter returns to the role of language to explore how international law could be reimagined. Simpson characterises international law as a "linguistic-imaginative enterprise" (p. 197) and reiterates that changing the language with which we describe and articulate international law is tantamount to changing the field itself. He then reaches for a vocabulary seemingly far from the legal field: that of gardening. Drawing on a productively eclectic set of observations about gardens, including passages from Voltaire's *Candide* (1759), Leonard Woolf's thoughts on irises, Rebecca West's recollections of cyclamens planted at Nuremberg, and Khrushchev's pastoral evocations in his letters to Castro, Simpson places international law in a different linguistic frame to suggest that, with careful cultivation, we can work towards growing an international society that is at once fruitful, resilient and beautiful.

The Sentimental Life of International Law is an intellectually adventurous book. It draws on a wide range of intellectual resources, and productively thinks through international law in light of ideas seemingly alien to it, such as friendship, laughter and bathos. Above all, by focusing on how a field such as international law writes and speaks itself, it encourages readers to reflect upon their own critical practice, and how that practice might take part in the building of a more decent and hopeful world.

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The Investment Treaty Regime and Public Interest Regulation in Africa. By Dominic Npoanlari Dagbanja. [Oxford University Press, 2022. xxv + 372 pp. Hardback £102.50. ISBN 978-0-19289-617-9.]

Dr. Dagbanja's book is about investment treaties made by African states. African states have been making investment protection treaties since the 1960s. The treaties involve assurances that the states will protect the foreign investment from adverse interference by the state. The protection which involves restrictions on the sovereign powers of the host state are premised on the assumption that the existence of investment treaties promotes the flow of foreign investment. The further assumption is that such flows promote economic development. If these assumptions are correct, after six decades of such treaties, African states must be in high states of development. They are not.

The assumptions on which the treaties are made are promoted by institutions like the World Bank and the International Monetary Fund. The assumptions relating to economic development appear in the preamble of investment treaties. On the basis of these assumptions, the treaties prohibit interference by the state with the foreign investment even if the measures are in the public interest. It does not require sophisticated economic studies to show that the assumption that investment treaties lead to economic development is not true. The fact that states have developed without treaties (e.g. Brazil), that those states which have terminated

the treaties have not been affected adversely as far as flows of foreign investment are concerned (e.g. South Africa) and the exorbitant damages that states have had to pay as a result of arbitration awards resulting from the violation of these treaties show that the system that has been created needs to be contested as it is based on unprovable assumptions. The treaties may have led to the economic development of a select group of arbitrators in the field and large law firms of the West but not of developing states. Questions need to be raised and answered as to the utility of the treaties. Dagbanja's splendid book does just that.

Academic opinion has been divided on the legitimacy of the system of investment treaties and the regime of investment protection they have created. There is a large body of literature supporting the investment treaty system despite the fact that the arguments that can be made for them are flimsy. The system is supported by sheer numbers of Western international lawyers rather than the cogency of their arguments. Increasingly, there is a build-up of literature against the system. In the earlier period, few African jurists, among them notably, Samuel Asante of Ghana, opposed the system. But, now, there is an increasing number of younger African scholars joining in the criticism of the system. The African practice on the subject seems to be changing. Dagbanja's contribution comes at an opportune time adopting a novel approach to the subject that will make it stand out as a major contribution to a new way of thinking about such treaties in a part of the world, which through force and now through deception, has been made the object of plunder.

Dagbanja's brilliant book does not get its uniqueness because it is on Africa, a region hitherto ignored in the study of international investment law. What is unique is that Dagbanja concentrates his study on a combination of the constitutional issues of African states making treaties that curb their constitutional duty to make laws to further the public interest of their people and international law principles concerning human rights, the environment and development. The precise question he asks is "Do, or should, national constitutions and the rights they preserve limit the powers of African states in investment treaty-making?" (p. 2). The question immediately highlights the irreconcilable tension between the constitutional duty of the state to prioritise the furtherance of the interests of its people and the interest of the foreign investors in the protection of their investments in the host state. The answer that Dagbanja gives is the African state is not vested with the constitutional power to negotiate such treaties which prioritise the rights of the foreign investor over the interests of its citizens. The answer is further supported by the fact that customary international law principles on human rights, the environment and the right to development, received into the domestic laws of African states, make the legality of such treaties suspect.

Africa has long been the quarry for natural resources for the developed countries. It has been looted for centuries by imperial powers and their corporations. Investment treaties ensure that Africa continues to be looted long after decolonisation. The resource curse of Africa has been manipulated by capital exporting powers to continue with the situation that existed during the colonial period through the system of investment treaties. After decolonisation, the former imperial powers have been joined by new actors, China and India, in continuing the exploitation. China's Belt and Road Initiative ensures Chinese presence in Africa. Both the West and the new hegemons act on the deluding, altruistic assumption that they have the necessary civilisational and ideological tools to ensure the development of poorer states.

It is in the context of these developments that Dagbanja's book assumes significance as it surveys the need to preserve the regulatory capacity of the African states to promote the public interest. He does so in the context of the experience of five African states but the conclusions he draws are of global significance. Dagbanja has chosen five states – Ghana, Cameroon, Egypt, South Africa and Nigeria – but the issues in other African states, and indeed all developing countries, are very similar. He points out that the treaties are based on the violation of constitutional principles that the state must have the capacity to regulate in the public interest and the violation of treaty obligations to protect human rights and the environment. The cogency with which Dagbanja establishes these propositions will have to lead to a rethinking about investment treaties in Africa but also in other parts of the world.

Dagbanja buttresses his arguments by developing what he calls an imperative theory drawing the theory from both constitutionalism and international law. Using the interplay of the two systems to draw the principle that the investment treaties offend imperative notions of constitutional systems as well as of international law is a strength of his thesis that investment treaties are obnoxious to fundamental prior principles on which state authority rests. Dagbanja is a Ghanaian lawyer. He shows a particular mastery over the Ghanaian law and awards in the area he writes on. The arbitration cases brought against Ghana show close analysis of the impermissibility of the state to make investment treaties the principle object of which are to constrain a state from acting in the public interest. Such concerns are repeated in other parts of the world. A court in Ecuador recently held that the country's investment treaties are unconstitutional. The court in the *Eco-Oro v Colombia* case also questioned whether investment treaties should impede the state's power to protect the environment. There will be a snowballing of the arguments that Dagbanja makes in the future course of the subject of investment protection. His book will give greater momentum to the argument in Africa and hopefully, outside Africa, as his reasoning has universal application.

The core of constitutionalism in Ghana, Dagbanja asserts after his survey of Ghanaian law, is that the state must always act in the public interest. This principle is recognised in the other African legal systems he has surveyed. Indeed, this is true of the constitutional systems of all democracies. The maxim *salus populi, suprema lex* is deeply rooted in constitutional systems. If that be so, what Dagbanja says of Ghana and the four other African states he studied, is true for the rest of the world.

There is no evidence that the courts in African states are incapable of meting out justice to foreign investors affected by state legislation that justifies recourse to overseas arbitration. There is increasing evidence that arbitrators are prejudiced in favour of foreign investors. Arbitral excesses have resulted in the legitimacy of the regime being doubted. The system itself survives because it leans towards providing relief to foreign investors even in situations where there are public interest reasons why a state should interfere with the investment.

Every aspect of investment treaties and the jurisprudence behind them is carefully marshalled by Dagbanja to show that they conflict with constitutional norms as well as principles of human rights law and international environmental law. This analysis is important because through interpretation of the words of the treaty, arbitrators have created an entirely unanticipated edifice of investment protection that goes well beyond the intention of the parties. Dagbanja argues that there is no room for the

inclusion of indirect expropriation in treaties as such expropriations are usually in the public interest. He argues against the inclusion of the most favoured nation clause in investment treaties. He points out the defects in the interpretation of the fair and equitable standard. He suggests other changes to the existing system. The book will have a definite and salutary impact in considering the reform of the investment treaty system in African states and other states. In the context of his criticisms, it appears that the best solution would be that adopted in South Africa which is to leave issues of foreign investment entirely to domestic law and dispute settlement to domestic courts. This is an important work which will have an immense impact on the future course of developments in the subject.

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