Book Review

*Imperialism, Sovereignty and the Making of International Law,*
Antony Anghie*

An alternative evaluation of the history of international law from the perspective of the disadvantaged peoples and states of the present world is the aim of Antony Anghie’s most recent publication, *Imperialism, Sovereignty and the Making of International Law.* The author has previously published several works on colonialism, the concept of governance and on international financial institutions and the Third World, always emphasizing the historical perspective, and he is one of the main figures of “Third World Approaches to International Law” (TWAIL).

Beginning with Vitoria and focusing on the elements of sovereignty and domination on the one hand, and dependence and subordination on the other, Anghie draws a line from the colonial and imperialistic period of international relations and the related stance of international law up to recent developments such as the so-called war on terror. His basic notion is that “international law continuously attempts to efface its complicity with colonialism” (p. 241). This book is not an exhaustive treatise on the history of colonialism, imperialism and international law. However, the author uses small time frames in order to shed light on those periods in which imperialism appeared, and he considers how it sometimes hid its true face under apparently humanistic masks throughout the course of time until the present. He thus connects already published parts of his enquiry with new

ideas in order to present an instructive and more complete narrative of the relationship between international law and imperialism.

The writings of Francisco de Vitoria, to whom Anghie refers as the first international legal jurist, are his initial object of study. Anghie argues that Vitoria was more concerned about the order between two different cultures than about the order between two different societies. Having once determined the non-sovereignty of the Indians, the project of “civilizing the uncivilized” could begin. According to Anghie, although Vitoria made an effort to include the Indians in the universal *jus gentium* by stating that they are human beings with a right to property, he insisted that the Indians were also bound by the rules of the *jus gentium* which obliged them to receive the Spanish as the “ambassadors of the Christian peoples”. This gave the Spanish the right to invade the Indian’s land, and in case of resistance on the part of the Indians, to wage a just war on them. In Anghie’s opinion, Vitoria used the argument of cultural difference of the Indians to establish a violation of the universal *jus gentium* – because of “otherness”, the Indian fails to fulfill the universal standards defined by the Spanish, and cannot be considered as sovereign. Anghie claims that sovereignty doctrine “acquired its character through the colonial encounter”. The author raises doubts as to whether there could have been other possibilities to adopt an international legal system, if the colonized peoples and territories of the world had not been declared non-sovereign from the outset.

The author then takes a step into the 19th century and considers the universalization of international law, omitting the intermediate period of international lawyers such as Vattel. The universalization was basically due to the imperial expansion of the European powers. Anghie concentrates on the techniques, doctrines and legal methodologies that were developed to explain and justify the European expansion by means of positivist jurisprudence. Positivist jurisprudence implied the primacy of the state, and the problem of creating an international legal order between sovereign states was approached by “defining and excluding the uncivilized” (p. 52). Since the “uncivilized” did not live in social settings that would correspond to the European definition of statehood, they could not be a member of the “civilized” “family of nations”. According to Anghie, sovereignty in the sense of 19th century international law doctrine meant “an absolute set of powers which was bound by no higher authority and which was properly detached from all the imprecise claims of morality and justice” (p. 101), and