Decolonising International Relations: African Perspectives on Global Justice - The Case of the Gambia in the International Court of Justice.

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ABSTRACT

This paper analyses The Gambia's legal activism at the ICJ as a pivotal case study of decolonising IR in practice. It argues that Gambia's case against Myanmar for alleged genocide against the Rohingya demonstrates how a small African state can avail itself of international legal mechanisms to challenge global power hierarchies and assert a vision of justice rooted in postcolonial solidarity and African philosophical traditions. Going beyond the level of theoretical critique, the paper draws on primary documents of the ICJ and The Gambia's legal submissions to demonstrate a form of "decolonisation-in-action." It examines how The Gambia succeeded in overcoming procedural hurdles, championed the erga omnes partes character of the Genocide Convention, and repurposed the ICJ as a cornerstone of the international system-as an instrument of accountability. While cognizant of resource asymmetry and geopolitical constraints, the study concludes that Gambia's strategic agency constitutes a transformative blueprint of how the Global South states might play the role of active shapers of international norms from within.

Keywords. Decolonising, International Relations, International Court of Justice, Global Justice, Genocide, Postcolonial theory, The Gambia, Myanmar, Erga Omnes Partes.

INTRODUCTION

The discipline of International Relations, since its inception, has been predominantly shaped by Western epistemological frameworks, from realist and liberal institutionalist theories to the very definition of what constitutes a "legitimate" subject of study. This has often resulted in the systematic exclusion, marginalisation, and misrepresentation of voices, experiences, and modes of knowledge emanating from the Global South. The project of decolonising IR is, therefore, not an additive process of incorporating more diverse case studies into the canon but a fundamental rethinking that requires engagement with hegemonic narratives. It involves centring the historical and structural inequities produced by colonialism and imperialism that continue to undergird contemporary global power dynamics (Acharya & Buzan, 2019). Although the theoretical and normative call for decolonising the discipline has seen significant traction in the last couple of years, empirical scholarship detailing how states of the Global South, and particularly small African nations, actively enact and operationalise this decolonisation via concrete strategic action within the existing-but-imperfect-international system remains comparatively scarce.

This paper fills this critical lacuna by examining The Gambia's trailblazing legal activism at the ICJ as a key case study of "decolonisation in action." We argue that The Gambia's determination to take Myanmar to court for alleged genocide against the Rohingya constitutes one of the most potent and sophisticated forms of African agency seen thus far. This was no rejection of the international system, but rather a strategic repurposing of its very own institutions-the ICJ and the Genocide Convention contest entrenched global power hierarchies. The case shows how a state with limited material power can use international law to articulate a vision of global justice that is deeply anchored in postcolonial solidarities as well as in African philosophies such as Ubuntu, which holds that our shared humanity and mutual responsibility bind us together.

This is an act of legal entrepreneurship with a dual function: it sought concrete accountability for the Rohingya people, while challenging the Western-centric norms that have shaped the international legal order. In successfully establishing its standing and receiving a favourable judgment on preliminary objections, The Gambia proved that the tools of international law are not the monopoly of powerful states but rather can be reclaimed by the marginalised in order to demand justice and redefine normative meanings of responsibility and community. To unpack this argument, the paper proceeds as follows: after outlining the research methodology and conceptual framework that explicitly combines primary legal analysis with a postcolonial theoretical lens, it explores the colonial legacies underpinning international law and governance to set up the intervention by The Gambia as a challenge to that historical inertia. At the heart of the paper is a detailed case study of The Gambia v. Myanmar, which is underpinned by primary source evidence from the ICJ case in order to dissect the legal strategy involved, the rebuttal of Myanmar's objections, and the landmark ruling on obligations erga omnes partes. This is followed by an assessment of the African philosophical underpinning of this agency, linking the legal action to notions of solidarity and restorative justice. This is balanced by an appraisal of the challenges and constraints faced, including resource limitations and geopolitical realities. In conclusion, the wider implications of this case for decolonising IR theory and practice are considered, with a view to establishing that The Gambia's actions represent a groundbreaking blueprint for how agency can be executed from the margins to reform the global order from within.

Research Methodology and Conceptual Framework

This research uses a rigorous qualitative case study approach to analyse the case of The Gambia v. Myanmar at the ICJ. This methodological choice is based on its potential for eliciting a thick, contextualised understanding of a complex real-world phenomenon in its authentic context. To guarantee empirical robustness and analytical depth, this research is embedded within methodological triangulation, cross-verifying emergent insights from diverse sources to construct one exhaustive, valid account. This multi-pronged approach directly responds to scholarly calls for greater methodological transparency in critical IR and legal scholarship.

Primary Source Analysis: The foundation of this analysis is based on a direct interaction with official court documents from the ICJ. These include:

- Application Instituting Proceedings filed by The Gambia on 11 November 2019, containing the original submissions and legal grounds.
- The Gambia's Written Observations on Preliminary Objections, 20 April 2021, is a critical document that lets the outside world see, in real-time, the state's legal strategy, detailing its responses to the various challenges by Myanmar and demonstrating sophisticated legal reasoning.
- The landmark Judgment on Preliminary Objections by the ICJ of 22 July 2022 represents the authoritative legal interpretation and final resolution of the said procedural hurdles by the Court.
- A particularly important primary document is the Note Verbale from The Gambia to Myanmar, dated 11 October 2019. As a source of evidence, this piece of correspondence with another country identifies the point at which The Gambia transformed its general political concern over Myanmar's atrocities into a specific, opposable legal claim in preparation for seising the Court.

Secondary source integration: It places the case in a broader scholarly conversation through a sustained engagement with a strong corpus of secondary literature; this includes:

- **Theoretical Underpinnings**: Seminal works within the area of postcolonial theory and Third World Approaches to International Law (TWAIL) form the critical lens through which historical and structural power dynamics are to be conceptualised.
- **Philosophical Context:** African philosophical texts on concepts such as Ubuntu and Pan-Africanism that may help explain the normative and motivational underpinnings for the actions of The Gambia.

- **Contemporary Legal Scholarship:** Using recent legal analyses of the case in and of itself as examples, compare such things as Becker (2020), Islam & Muquim (2020), and Kronberga (2022)-and integrate specialist legal commentary.

Conceptual Framework

The analysis is framed through a conceptual framework that links critique explicitly with agency. This framework is based on two pillars:

- **TWAIL Critique:** Drawing on scholars like Mutua (2000) and Anghie (2005), we use TWAIL as a lens to deconstruct the colonial origins and continuing imperial character of international law. Such a critique exposed the ways in which legal doctrines, such as terra nullius and the "standard of civilisation," were constructed to exclude and subordinate people from non-European backgrounds, legacies, which continue to reverberate in modern institutions.

- **The Concept of African Agency**: This critique is not the end-point but the starting point. It is paired with the active concept of African agency-the capacity of African states to act independently, make their own free choices, and influence international outcomes. This agency is articulated not through a rejection of the system, but through what can be termed pragmatic contestation: the strategic navigation and repurposing of the system's own rules and institutions.

The dual framework enables us to assess how The Gambia, drawing on the rich philosophical traditions of Ubuntu from Murithi (2006) and Pan-African solidarities from Adi (2018), moved beyond simply using the critique of inequities in international law. This was a pragmatic and skilful use of the Convention on Genocide and the ICJ to advance a decolonial agenda that turned institutions of the system into instruments of its own reform.

To fully appreciate the significance of The Gambia's intervention, one must first understand the historical terrain on which it acted. International law is not a neutral realm of abstract principles; it is deeply rooted in the colonial project. The so-called foundational doctrines of terra nullius ("land belonging to no one") and the "civilising mission" were not simply abstract theories of philosophy but powerful legal tools utilised to give legitimacy to the European imperial expansion and subjugation of non-European societies (Anghie, 2005). It is on this historical foundation that international law, as a discipline, came to be one that systematically privileges Western voices and interests at the expense of all others. These legacies of colonialism are not things of the past; rather, they are dynamically reproduced in the architecture and operation of contemporary global governance. Institutions like the United Nations Security Council, with its anachronistic permanent membership and veto power-and the Bretton Woods financial institutions reflect and entrench power imbalances that continue to privilege former colonial powers, as noted by Vestergaard & Wade (2015). This perpetuates a system of neocolonialism wherein structural dependence and unequal rules maintain a global hierarchy often at the expense of the concerns and agency of states in the Global South. The decolonisation of international law, then, is a pressing practical imperative. This would imply a critical engagement with the founding principles of the system and an actual re-imagining of these frames according to the experiences, aspirations, and juridical voices of the Global South (Mutua, 2000). It requires an overcoming of the politics of request towards a practice of normative, assertive contestation. In this light, the legal move by The Gambia represents something very significant: a critical decolonial move. By invoking the 1948 Genocide Convention against Myanmar, The Gambia did something quite profound: it cast a small West African nation as a guardian of universal human rights. This directly challenges the Eurocentric assumption of the prerogative to define, enforce, and shape global norms as residing with traditionally Western, powerful states alone (Schmidt, 2020). Such an act of agency serves to illustrate that decolonisation is not an abstract project stuck in theory or confined to academic discourse; it is a practical, ongoing struggle. It is advanced through the strategic deployment of the system's own frameworks by employing its conventions, its courts. The case of The Gambia v. Myanmar represents a powerful testament to the ways in which states from the Global South, with limited political or economic influence, are not passive objects of international norm reshaping but active agents within the system, a fact well evidenced by their challenging entrenched hierarchies and demanding accountability on their own terms.

African Perspectives on Global Justice

The Gambia's legal action was not just a technical dispute regarding treaty interpretation but a profound expression of a very distinctive African philosophy of global justice. This outlook moves beyond the atomistic individualism that underpins so many Western legal frameworks, underlining instead a sense of communal solidarity, restorative justice, and the basic interconnectedness of human beings. At its core is the philosophy of Ubuntu, a Nguni Bantu term loosely translated as "I am because we are." Ubuntu holds that our humanity is inextricably linked to the humanity of others; the emphasis is on mutual responsibility, compassion, and the duty to ensure the dignity of every person within the community is maintained (Murithi 2006; Lauer 2017). It is not a passive sentiment but an active ethical commitment to participation and care for collective well-being.

By advocating for the Rohingya, a people with no ethnic, geographical, or historical link to The Gambia, the nation operationalised Ubuntu on a global scale. This was an expression of what may be described as transnational solidarity, extending the circle of "we" beyond national boundaries to include all of humanity. In large measure, this approach is fully aligned with the Pan-Africanist ethos, which over time has framed liberation as a project not of one nation but of humanity as a whole, emphasising collective African responses to global oppression and with a commitment to standing in solidarity with people everywhere who suffer at the hands of marginalisation (Adi, 2018). The personal motivation of The Gambia's then-Minister of Justice, Abubacarr Tambadou, is telling. He cited his visceral reaction to the suffering of Rohingya refugees in Bangladesh and drew a direct parallel with the 1994 genocide against the Tutsi in Rwanda, which he had witnessed as a legal professional. The sense of a shared human condition and a moral obligation to not allow such atrocities to recur is a powerful enactment of an Ubuntu-inspired world view (Cochrane & Fatty, 2019).

Moreover, The Gambia's case is not an isolated act but part of a broader, often overlooked, lineage of African contributions to the normative architecture of international justice. African states have historically been at the vanguard of efforts to combat impunity, championing the principle of universal jurisdiction and playing a pivotal role in the establishment of the International Criminal Court (Cryer, 2005). By strategically leveraging the ICJ, the UN's principal judicial organ, to confront state-level impunity for genocide, The Gambia epitomised a proactive and sophisticated African approach to shaping international law from within. It moved Africa from the subject of international legal discourse into an active architect, strongly reinforcing the idea that the pursuit of justice cannot be parochial; it is instead a universal duty which Africa is uniquely positioned and morally compelled to champion.

Challenges, Critical Perspectives, and Strategic Navigation

This legal victory by The Gambia is a milestone, but any critical engagement with the case also needs to emphasise profound structural constraints and geopolitical limitations placed on African agency in the international legal system. This recognition provides a balance to celebratory narratives; it serves as a guideline toward a more realistic mapping of the decolonial practice terrain.

The adversarial nature of ICJ proceedings puts a premium on legal resources, in which financial and technical imbalances can become highly consequential for the outcome of the case. Myanmar's preliminary objections, though ultimately dismissed, were a strategic leveraging of those asymmetries, forcing The Gambia to mount a costly and complicated defence. The immense financial burden of hiring international counsel, gathering evidence, and sustaining a multi-year litigation was one that The Gambia, a small developing state, could not bear alone. Its ability to proceed was entirely contingent on the financial and political support of the Organisation of Islamic Cooperation (OIC) (Jeffrey, 2023). While pragmatic and highly effective, this dependence underlines a fundamental paradox: for most African countries, genuine access to international justice is often mediated through foreign partnerships. This goes to core questions of autonomy, setting the agenda, and subtle ways in which dependence shapes legal strategy. It underlines a structural problem where the actual act of legal agency would necessitate sacrificing some operational independence, a dilemma at the heart of navigating a system not designed for equal participation. Geopolitical Constraints and the Reality of Selective Justice. The geopolitical context in which international law operates cannot be divorced from the legal outcome of the case. As Jeffrey (2023) persuasively argues, the case of The Gambia was viable, in part, because Myanmar is a relatively isolated state with limited strategic alliances and diminishing economic interest for major Western powers. This invites

a sobering counterfactual: would a similar legal challenge to a permanent member of the UN Security Council or key Western ally have been treated with the same degree of permissiveness, or would it have been subject to immense political and economic pressure? This reality tempers any triumphalist reading of the case and instead highlights the persistent, deeply political selectivity that governs the enforcement of international justice, a central and enduring critique of postcolonial and TWAIL scholarship. Strategic Navigation as Decolonial Praxis In spite of such formidable challenges, however, the success of The Gambia demonstrates a viable path of strategic navigation. The nation did not have the power to change the rules of the game, but it mastered them with great skill. In forming this strategic alliance with the OIC, The Gambia shrewdly transformed a would-be vulnerability, resource constraints-into a source of strength by marshalling the power of international solidarity. Mindful of procedural rules, framing sound legal arguments, and winning on the pure principle of erga omnes partes obligations, it showed that even the most resource-constrained nations can, through determination, legal ingenuity, and collaborative strategy, champion accountability and reshape international norms. This is pragmatic agency, exercised within the interstices of a constrained system, and it represents a potent form of decolonial praxis.

Implications for Decolonising International Relations

Legal activism on behalf of the Rohingya in The Gambia v. Myanmar constitutes much more than a single victory in the courtroom; it possesses an altogether deeper and multi-layered impact on the greater project of decolonising International Relations. The case presents a potent empirical counter-narrative that problematizes core assumptions of the discipline while providing a tangible model for transformative practice.

First, the case fundamentally subverts the conventional understanding of power in IR. Traditional theories, particularly realism, equate power with material capabilities, military strength and economic wealth, and consequently relegate small states to the role of passive objects or allies in great power competition. The Gambia's success shatters this paradigm. It demonstrates that influence in the international arena can be accrued through what can be termed principled agency: the strategic wielding of moral authority, legal acumen, and normative commitment. By acting as a "norm entrepreneur" for accountability, The Gambia generated significant soft power, compelling the world's primary judicial body to affirm its stance and mobilising international public opinion. This proves that agency is not the exclusive birthright of the powerful but can be cultivated and exercised by even the smallest states through courage and strategic intelligence, thereby expanding our very definition of what constitutes meaningful action in world politics.

Second, the initiative taken by The Gambia articulates a serious demand to recenter African agency and Global South experiences in IR theory and practice. Dominant theoretical frameworks have long regarded the Global South as a passive site of data extraction or a problem to be managed, rather than as a source of inventive theory and practice. Seen through the optic of postcolonial theory and African philosophy, the poverty of such exclusionary frameworks is laid bare by the actions taken by The Gambia. This is an empirical grist that develops more robust, inclusive, and accurate theoretical models as such; it can handle the modes of resistance, negotiation, and leadership issuing from the peripheries of the global order (Smith, 2020). This moves the discussion beyond critiquing Western-centric IR toward building a pluralist discipline reflective of the full diversity of global political life. 3. A Pragmatic Blueprint for Reform from Within Perhaps most significantly, The Gambia's strategy offers a pragmatic blueprint for decolonisation that moves beyond the dichotomy of either accepting the system or rejecting it outright. Rather than engaging in a fruitless call for the wholesale dismantling of international institutions, a project of immense difficulty, The Gambia demonstrated the potential for imminent critique and reform. It took a cornerstone of the post-war liberal order, the ICJ, and repurposed it to hold a state accountable in a manner that powerful states had refused to do. This is decolonisation as a practical, strategic project: mastering the rules of the existing game to challenge its inequitable outcomes and gradually reshape its normative foundations from within. It shows that the tools of the system, however imperfect, can be wielded against the system's own injustices.

Finally, the precedent set by The Gambia has proved catalytic, creating a demonstrable ripple effect across the Global South. Perhaps the most significant example is the case brought by South Africa against Israel at the ICJ over the Gaza Strip, which directly replicates the legal strategy of The Gambia in invoking the Genocide Convention. This was no coincidence; it was inspiration. The Gambia's success empowered another state from

the Global South to see itself as a valid enforcer of international law and make use of the same legal gateway of erga omnes partes obligations. This shows that sometimes one act of courageous agency can create a new script for action, which empowers other marginalised states to see international law not as a static, Western-imposed monolith but dynamic and contested terrain of struggle that can be entered and shaped through principled legal action. It instils a sense of collective capability and starts to build a jurisprudence of accountability led by the Global South for the global community.

CONCLUSION

The Gambia's case against Myanmar at the International Court of Justice represents far more than a successful legal proceeding; it marks a significant and instructive milestone in the long and arduous project of decolonising international relations. This paper has argued that The Gambia's action embodies a form of "decolonisation-in-action," demonstrating with compelling clarity that agency, influence, and normative leadership in the global arena are not the preserve of only wealthy or powerful nations. By strategically repurposing the instruments of the international system-the ICJ and the Genocide Convention, The Gambia challenged the very hierarchies such institutions have historically undergirded. In doing so, it has forcefully demonstrated the active and transformative capacity of African nations as subjects, rather than mere objects, of international law in crafting a more equitable and inclusive world order.

The journey this case has travelled, from The Gambia's bold Application to the ICJ's landmark judgment, highlights a critical duality. On one hand, it is a story of profound African agency, rooted in the philosophical tenets of Ubuntu and Pan-African solidarity. It illustrates how moral authority, coupled with legal strategy, may transform into a source of effective soft power, thus allowing a small state to hold a larger one accountable for the world's most heinous crime. On the other hand, our analysis has soberly acknowledged the set of persistent structural constraints, the resource asymmetries and geopolitical selectivities, that continue to circumscribe such agency. These challenges are not mere footnotes but at the heart of understanding the terrain on which decolonisation must be practised. Yet herein lies The Gambia's success-namely, in strategically working within these constraints, leveraging international solidarity and meticulous legal argumentation to overcome material limitations.

In the end, The Gambia's legacy is twofold: theoretically, it is an instructive case study that demands the re-centring of African experiences and modes of action in IR scholarship, challenging that discipline's Western-centric parochialism. Practically, it provides a pragmatic blueprint for reform from within-a demonstration that the tools of this current system can be used to reform its injustices. The fact that South Africa then emulated its strategy in a very different geopolitical context did not create a ripple but a wave of empowerment, indicating to other marginalised states that international law is also a terrain of struggle and transformation, not just a tool of power. In conclusion, the Gambian quest for justice places decolonisation in its proper light: not as a far-off ideal or some destructive impulse but an ongoing practice and commitment. It is hard work every day to challenge well-entrenched power structures, to master their rules, and to dare imagine and act for a different future. In navigating the ICJ to challenge impunity, The Gambia has empowered a global constituency to believe that the international legal order is not some static inheritance but a dynamic project-one that can and must be continuously reshaped through courageous and principled action, inch by inch, ever closer toward the professed but as yet unfulfilled ideals of justice and equality for all.

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