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DIVERSE PERSPECTIVES ON THE IMPACT OF COLONIALISM ON INTERNATIONAL LAW

This panel was convened at 9:00 a.m., Thursday, March 28, 2019, by its moderator Adrien K. Wing of the University of Iowa College of Law, who introduced the panelists: Olufunmilayo Arewa of Temple University School of Law; Larry Catá Backer of Penn State School of International Studies; Ambassador Namira Negm, Legal Counsel of the African Union; and Joel Samuels of the University of South Carolina.

Introductory Remarks by Adrien K. Wing*

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My name is Adrien Wing. I am Associate Dean of International and Comparative Law Programs at the University of Iowa College of Law where I have been teaching for thirty-two years. I am also pleased to be with you today because I have been a member of ASIL for thirty-seven years. When I joined, we did not have any topics like today's subject. We certainly did not have the demographic diversity that is represented in this room. We have come a long way in some respects, and so at least for programming, it is wonderful that we have this topic "Diverse Perspectives on the Impact of Colonialism on International Law." Three of the speakers will emphasize Africa. One person will focus on Latin America. The MILIG Interest Group, the minority interest group, is sponsoring this session. We are fortunate to have the co-chairs of the Interest Group here: Rafael Porrata-Doria and Christina Beharry.

Our first panelist will be Professor Joel Samuels who is from the University of South Carolina Law School. He is Director of the Rule of Law Collaborative. The next speaker will be Professor Olufunmilayo Arewa who is the Murray H. Shusterman Professor of Transactional and Business Law at Temple Law School. Our third panelist will be Ambassador Namira Negm who is Legal Counsel for the African Union Commission. She has flown in from Addis Ababa. Many of you are probably not familiar with her, so I will mention some of her credentials. She holds her Ph.D. from the University of London, and she has held many prominent positions, including as former Egyptian Ambassador to Rwanda. Our last speaker will be Professor Larry Backer who is the W. Richard and Mary Eshelman Faculty Scholar and Professor of Law and International Affairs at Penn State Law School.

Before our panelists begin, I am going to talk briefly about some theoretical aspects of this topic, including from liberalism, Critical Race Theory, Third World Approaches to International Law (TWAIL), and feminist theory perspectives. In the liberalism view of international law relating to colonialism, there is the standard story of the developed West which created international law principles wanting to impose certain aspects of their laws on the territories it controlled to "civilize" them. Implicit in the standard story is that the colonized were inferior and had nothing intellectually worth contributing to their colonial masters or the broader international community.

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Nowhere in the standard story is there a serious examination of the negative aspects of colonialism, neocolonialism, capitalism, or imperialism. The colonial and ongoing plunder of Africa by the West remains unmentioned or underemphasized. The role of the African slave trade and its contribution to the cumulation of capitalist wealth is not sufficiently taken into account. The standard story may not really focus at all on the colonialization of the Americas or the British role in Indian exploitation.[1]

Various critical jurisprudential frameworks have developed in the past thirty years to contest the standard story, including Critical Race Theory, feminism, TWAIL, and New Approaches to International Law (NAIL).[2] All of these perspectives interrogate how the standard story of international law is not objective or neutral, but biased in favor of western, white, male elites.

TWAIL, which held its last major conference during summer 2018 in Singapore, has scholars who place the colonial project at the center of international law.[3] There are many members of ASIL who have been essential in the development of TWAIL literature.[4]

Colonialism shaped international law doctrines in various ways. For example, the *terra nullius* doctrine considered land to be available to be taken by colonizers even when there were people already living on that land. Treaties were frequently negotiated from unequal positions that always favored the colonizer. The invention of the mandate and trusteeship systems unjustifiably kept former colonies in states of subordination for decades.[5]

The end of colonialism did not result in a community of equal nations. Instead, neocolonialism, a term the first leader of independent Ghana Kwame Nkrumah coined,[6] resulted where former colonies continue to be economically exploited by their former colonizers or other dominant powers.

In addition, today, global imperialism or imperialism in the era of globalization extends the colonial and neocolonial exploitation.[7] Colonial era international law has attempted to reinvent itself as democratic and universal international law, and the efforts remain ongoing as well as problematic. Equally tragic has been when some developing world countries have themselves engaged in colonial or neocolonial practices in relation to other smaller states or to minorities and indigenous people within their own boundaries. The Western Sahara's absorption by Morocco instead of becoming an independent Saharawi Arab Democratic Republic is a prime example.

Feminist theory is also not part of the standard liberal story, the implicit assumption being that discussions of "mankind" do not need to include female voices or concerns. I often write from a perspective called Critical Race Feminism, which is the intersection of race, gender, and other identities emphasizing the status of women of color.[8] Instead of just highlighting the problems the women face, I have emphasized their strengths and their contributions to their countries and

[1] *See* SEYLA BENHABIB, THE RIGHTS OF OTHERS: ALIENS, RESIDENTS, AND CITIZENS 99–100 (2004).

[2] *See* NEW APPROACHES TO INTERNATIONAL LAW: THE EUROPEAN AND THE AMERICAN EXPERIENCES (José María Beneyto & David Kennedy eds., 2012).

[3] *See, e.g.*, ANTHONY ANGHIE, IMPERIALISM, SOVEREIGNTY, AND THE MAKING OF INTERNATIONAL LAW 4 (2005).

[4] *See, e.g.*, B.S. Chimni, *Towards a Radical Third World Approach to Contemporary International Law*, 5 ICCLP REV. 14, 16–30 (2002); Antony Anghie & B.S. Chimni, *Third World Approaches to International Law and Individual Responsibility in Internal Conflicts*, 2 CHINESE J. INT'L L. 77 (2003); James Thuo Gathii, *International Law and Eurocentricity*, 9 EUR. J. INT'L L. 184 (1998). ANTHONY ANGHIE, THE EVOLUTION OF INTERNATIONAL LAW: COLONIAL AND POSTCOLONIAL REALITIES (2006).

[5] *See* B.S. Chimni, *Capitalism, Imperialism, and International Law in the 21st Century,* 14 OR. REV. INT'L L. 17, 27 (2012).

[6] *See* KWAME NKRUMAH, NEOCOLONIALISM, THE LAST STAGE OF IMPERIALISM (1965).

[7] CHIMNI, *supra* note 5, at 28.

[8] *See* CRITICAL RACE FEMINISM: A READER (Adrien K. Wing ed., 2d ed. 2003); GLOBAL CRITICAL RACE FEMINISM: AN INTERNATIONAL READER (Adrien K. Wing ed., 2000).

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international law.[9] Unfortunately, today most of international law continues to ignore the roles of women. Nevertheless, there is a lot more feminist literature in international law today, including by TWAIL authors.[10] For example, I recently published a book chapter on feminism and international law for a new feminist reader.[11] Women who have written from a TWAIL or Critical Race perspective might highlight how from colonial times onward, women were often oppressed within their own societies as well as by the colonists. To this day, women in every country remain at the bottom economically, politically, and educationally.

I want to end my opening remarks on an optimistic note. Rwanda evolved from a colonial period where the divisive system imposed by the Belgians eventually contributed to a horrific genocide. Today, Rwanda has a 61 percent majority female parliament, which is the most women of any country in the world. Now, did that just happen? Rwanda is one of the many countries that has a gender quota in the parliament. You cannot get a substantial number of women in many countries without gender quotas. So, women won all the female seats and then women won many open seats. No one can know whether this victory will mean anything substantively in the long run. What if all 61 percent were like Margaret Thatcher, for instance? Could it possibly mean that there is a better chance in this country to overcome the legacies of colonialism and neocolonialism? Could it mean that we in the West may have some lessons to learn from Rwanda? Thank you.

The Legacy of Colonialism on the Rule of Law in Sub Saharan Africa

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*By Joel Samuels**

The impact of the colonial legacy and the decolonization process on the rule of law in sub-Saharan Africa encompasses virtually every component of the rule of law—governance, accountability, transparency, corruption, human rights, gender rights, access to justice, and the assurance of clear, publicized, stable, and just laws.[1] These remarks are intended to provide an overview of some of the consequences of that legacy on the slow and delicate march toward a future where states and their leaders across the region embrace and abide by the rule of law.

At the outset, it is important to note that colonialism's impact is not just on the rule of law, but on every aspect of the lives of every citizen. At the Rule of Law Collaborative, we have over sixty faculty across eighteen departments, including political science, history, social work, public health, and education, who are affiliated with our work. For us, as important as access to justice is to the

[9] *See, e.g.*, Adrien K. Wing, *Women's Rights and Africa's Evolving Landscape: Can the Women's Protocol of the Banjul Charter Make a Contribution?*, *in* Africa: Mapping New Boundaries in International Law 13 (Jeremy I. Levitt ed., 2008); Adrien K. Wing, *The International Human Rights of Black Women: Justice or Just Us*," *in* Black Women and International Law: Deliberate, Interactions, Movements and Actions 37 (Jeremy Levitt ed., 2015).

[10] *See, e.g.*, Vasuki Nesiah, *The Ground Beneath Her Feet: TWAIL Feminisms*, *in* The Third World and International Order: Law, Politics and Globalization, at 133 (Antony Anghie, Bhupinder Chimni, Karin Mickelson & Obiora Okafor eds., 2003).

[11] *See* Adrien K. Wing, *Feminism and International Law*, *in* Feminist jurisprudence 268 (Cynthia Bowman & Robin West eds., 2019).

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[1] These remarks focus on the lasting legacies of the French and British colonial powers in Africa, rather than those of Germany, Belgium, Portugal, Spain, and Italy, as their impacts cast the longest shadow. I will also note that these remarks contain a great deal of generalization due to the panel's time constraints.

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