



## THIRD WORLD APPROACHES to INTERNATIONAL LAW *Review*

*TWAILR: Reflections ~ 5/2019*

### Series Introduction – **Fascism and the International: The Global South, the Far-Right and the Global Legal Order**

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The dramatic return of openly fascist or far-right movements and parties to the political mainstream, right across the Global North and South, is one of the major crises facing the so-called ‘international community’ today. The effects of this re-centring, both on domestic legal orders and on the international legal order itself, have been incredibly divisive. The recent predicaments of states including Brazil, India, the US, the Philippines, Hungary, India, Austria and Sweden, and of international institutions such as the United Nations, the WTO, the EU, the Organization of American States, among others, offer only a few illustrations.

With the vitriol of aggressively xenophobic nationalism and accumulationist anti-egalitarianism now flooding in from Manilla as much as it is from Munich, this crisis might appear to be operating in a sphere that is largely separate from the problems of colonialism and post-coloniality which have been the focus of TWAIL scholarship. Its ideological ‘anti-globalism’ notwithstanding, the far-right of the twenty-first century is, undeniably and self-consciously, a global phenomenon. Indeed, for the most powerful institutions of the international community, the problem is a universal one. As the UN General Assembly put it in its recent Resolution 71/179 (2017), *Combating glorification of Nazism, neo-Nazism and other Practices that Contribute to Fuelling Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance*, ‘the human rights and democratic challenges posed by extremist political parties, movements and groups including neo-Nazis and skinhead groups’, ‘are universal and no country is immune to them’. In response, it called on

all 'States and all other stakeholders to take more effective measures in accordance with international human rights law to prevent and combat those phenomena and extremist movements, which pose a real threat to democratic values, and to increase their vigilance and strengthen their efforts to recognize and effectively address those challenges'.

For the UN and other key international institutions, as well as for the familiar cast of liberal 'world leaders' who continue to dominate them (at least for now) – figures such as the WTO's Director-General Roberto Azevedo, former UN Secretary-General Ban Ki-moon, outgoing European Commission President Jean-Claude Juncker, Christine Lagarde, the IMF's Managing Director, and former US President Barack Obama – this crisis is simultaneously predictable and puzzling.

On the one hand, the far-right's new popularity appears to offer further proof that human nature is, indeed, constructed along the 'peace-loving', self-interested lines predicted by liberalism. As former US Secretary of State Madeleine Albright puts it in her recent bestseller, *Fascism: A Warning*, for example, there is 'within each of us an inexhaustible yearning for liberty'. Unfortunately, however, 'when we are afraid, angry or confused, we may be tempted to give away bits of our freedom – or, less painfully, someone else's – in the quest for direction and order'.<sup>1</sup> From this well-worn perspective, it is only to be expected that, in the nation-states of today's institutionally (if not substantively) post-fascist, post-colonial and post-communist world order, this temptation will be succumbed to by some of the people, some of the time – and only correct that their preferences should, like everyone else's, receive formal representation.

On the other hand, however, these powerful figures and institutions are mystified by the timing of this crisis. 'Here's what doesn't make sense', Albright continues. 'Countries [in which far-right movements have recently made striking electoral gains] such as Hungary, Poland, and the Philippines are not in unusually dire economic straights, nor have they suffered a recent historical trauma'. Moreover, 'the world is by many measures in better shape now than it has ever been'. 'By any objective standard, democracy – though everywhere tested – has not failed and is not failing', she asserts. 'Why, then, do we so often feel that it has and is?'<sup>2</sup>

Albright's response – one that appears to be widely shared within the institutions of the global order – is that 'we have grown so accustomed to receiving immediate satisfaction from our devices that we have lost patience with democracy's sluggish pace', and 'allowed ourselves to be misled by hucksters who pledge to

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<sup>1</sup> Madeleine Albright, *Fascism: A Warning* (Harper, 2018) 241-243.

<sup>2</sup> *Ibid*, 252-255.

deliver the world on a silver platter but have no clue how to make good on their promises'. From this it follows, in her view, that 'we' must remain vigilant, and double-down domestically and internationally on the task of defending the liberal-democratic institutions which find themselves threatened by the 'extremist' preferences they have unexpectedly channelled into office.<sup>3</sup> Similarly, 'deep[ly] concern[ed]' about the increased number of seats occupied by representatives of extremist parties of a racist or xenophobic character in a number of national and local parliaments', the General Assembly urges 'all democratic political parties to base their programmes and activities on respect for human rights and freedoms, democracy, the rule of law and good governance' and to 'refrain from forming coalitions with extremist parties of a racist or xenophobic character'. What this indicates, in sum, is that the central characters and institutions of the international legal order are responding to the global recentering of the far-right by folding its violence and rhetoric into a comfortingly familiar and overtly *general* narrative of the need to prevent the violation of universal human rights by enforcing international law more effectively.

The fact is, however, that when the first self-described Fascist and National Socialist movements emerged in Italy and Germany in the aftermath of the First World War, this toxic ideology of unbridled expansionism, racial supremacism and pervasive authoritarianism, founded on a pseudo-scientific, quasi-spiritual celebration of the creative potential of inequality and violence, was clearly a European, and not a universal, phenomenon. This does not mean, of course, that the non-European world had nothing to do with it. What it does mean, however, is that the Global South's relationship with fascism was – and arguably remains – highly complex and distinctive. For example, Third World intellectuals like Frantz Fanon and Aimé Césaire noted in the aftermath of the Second World War that inter-war fascism involved nothing less than the institution of 'a colonial system in the very heart of Europe'. Europeans might take solace in the idea that fascism was the 'supreme barbarism'; yet 'before they were its victims, they were its accomplices'. Before the 1920s and 30s, Césaire pointed out, Europeans had 'absolved it, shut their eyes to it, legitimized it' for centuries, because 'until then it had been applied only to non-European peoples'. In taking it upon themselves to stamp out, with merciless brutality, an imaginary barbarism among the non-Europeans they deemed 'sub-human', Césaire argued, Europeans had only succeeded in realising that savagery and

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<sup>3</sup> Ibid, 256-257.

inflicting it on themselves.<sup>4</sup> This 'terrific boomerang effect' was fascism's gruesome irony.

As this pointed analysis suggests, of the most important tasks ahead for TWAIL and post-colonial scholarship will be to continue the work of elaborating fascism's relationship to the European colonial project. In short, it is not only that international law has 'colonial origins' (the starting-point for the TWAIL project);<sup>5</sup> the same must also be said of fascism itself. Nonetheless, this connection is only part of the story. Another task – perhaps even more painful – is that of making sense of the boomeranging of Césaire's boomerang, which, having struck the European raciologists who first conducted colonialism's experiments in brutality, then looped back (during the inter-war period), and continues to loop back today, to strike their former guinea-pigs in the non-European world.<sup>6</sup> As this indicates, whereas in some contexts it might be useful for scholars of the Global South and international law to insist on the (European) particularity of (self-identifying) fascism, in others the critical move might be draw attention to the universalism of ('international') efforts to incorporate far-right violence into the generic notion of 'human rights violations'; or in still others, to point to relationship between the (European) specificity of the original fascist movements and the ('universal') consistency with which the sovereign state system has given rise to movements which celebrate its violent, inegalitarian, discriminatory effects.

These are the kinds of issues that the contributors to this series of *TWAILR: Reflections*, 'Fascism and the International: The Global South, the Far-Right and the Global Legal Order', will address in the coming months. Beginning with a symposium on international law's role in the 'before' and 'after' of Jair Bolsonaro's victory in the 2018 Brazilian presidential elections,<sup>7</sup> other themes will include the

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<sup>4</sup> Aimé Césaire [1950], *Discourse on Colonialism*, trans. Joan Pinkham (Monthly Review Press, 2000) 36. See Robert Knox, 'Boomeranging Imperialism? Race, Accumulation and the Construction of Fascist International Law', presented at the Fascism and the International: The Global Order Yesterday and Tomorrow *Workshop*, Museo de Arte Moderno, Mexico City, 18-20 June 2017. See also Vasuki Nesiah, 'Authoritarianism, Racial Difference and Violence' (keynote lecture); Kojo Koram, 'Countering Authoritarianism with Theory from South'; and Ayça Çubukçu, 'Of Rebels and Disobedients: Arendt on Lawbreaking', presented at the 'Countering the Rise of Authoritarianism: Philosophy, Law, Politics' Workshop (co-organised with Richard Joyce and Andrew Benjamin), 11-12 April 2019.

<sup>5</sup> Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (CUP, 2004) 3.

<sup>6</sup> I am using 'Global South', 'Third World', 'colonised and formerly-colonised world' and 'non-European world' as equivalent terms here, to refer not only to the peoples and territories of 'post-colonial states', but also to Indigenous peoples, the descendants of slaves and indentured labourers, and other racial and ethnic minority communities within settler states, post-colonial states and elsewhere. By the term 'still-colonised world' I mean settler-states, including the US, the Latin American states and the former British dominions, as well as 'consensual' colonies and incorporated territories like the Falkland Islands, New Caledonia, Hawaii and Puerto Rico.

<sup>7</sup> The contributions to this symposium, from Fabia Veçoso, Luís Bogliolo and Rose Parfitt, were first presented at a roundtable, *Legal Reflections on Authoritarianism in Brazil and Beyond*, held at Melbourne Law School shortly after Bolsonaro's victory in the Brazilian Presidential elections of October 2018). The roundtable was

legal dynamics of the Italian Empire (fascism's longest-running imperial project); the role of fascism in post-colonial theory and the implications for international legal scholarship; the relationship between the contemporary far-right and Europe's internal imperial projects; the past and present of fascism in regions like South Asia, Latin America, the Middle East and South-East Asia, in states including Mexico, Indonesia, Syria, and beyond.<sup>8</sup> While the series grows out of an existing collaboration (the Fascism and the International Project), proposals on themes related to the relationship between the far-right, the Global South and the international legal order are warmly invited for consideration.

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organised and chaired by Fabia Veçoso and Anne Orford, Director of Melbourne Law School's Laureate Programme in International Law.

<sup>8</sup> See eg (among others) John Reynolds, 'White Nationalist Internationalism? White Slaves, White Genocide, White Zionism'; Rafael Barajas Durán, 'Fascism in Mexico, from the foundation of Acción Nacional to the Neoliberal Right'; Reut Yael Paz, 'Exploring (M)otherness through International Law: Lessons from the the "Mothers of the Fatherland"?'; Miguel Rábago Dorbecker, 'Ulises Criollo: José Vasconcelos, Race and Fascism in Mexico'; Ntina Tzouvala, 'The Golden Dawn and White (Inter)Nationalism'; Hannah Franzki, 'Outlawing the State, but not the Market: Criminal Trials and the Political Economy of the Last Argentine Dictatorship (1976-1983)'; Leila Brännström, 'Fascism and Revolutionary Iran'; Adrian Smith, 'Fascism, Colonialism and the Plot to Overthrow Dominica'; Fabia Veçoso, João Henrique & Daniel Campos de Carvalho, 'The Portuguese and the Tropics: Opposing Decolonization, Promising Unity'; Vanessa Hearman, 'Anti-communism and the Promotion of a Return to Authoritarianism in Indonesia'; and Cícero Krupp da Luz, 'The Everyday Legal Impact of Italian Fascism in Brazil during the 1920s, 30s and early 40s'; Marnie Lloyd, 'Controlling Volunteers: Fascist and Anti-Fascist Foreign Fighting in the Spanish Civil War', and above (note 4), presented at the *Fascism and the International* Workshops I (Mexico City) and II (Melbourne).