THIRD WORLD APPROACHES *to* INTERNATIONAL LAW *Review*

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International Law: An Interview with Beverly Jacobs, Jeffery Hewitt, and Sylvia McAdam

Amar Bhatia interviews Beverly Jacobs, Jeffery G Hewitt, and Sylvia McAdam (Saysewahum) about international law and the continuing system of treaties, ceremonies and protocols that predate western colonial international law.

Amar Bhatia (AB): What does international law mean to you?

Beverly Jacobs: There are two world views about international law. The colonial development about international law, which is based on the colonial state understanding of who a party is according to colonial state law. The League of Nations started in the 1920s during the World Wars. The system was based on colonial state law, and recognition of what a state is. The description of a state was and is colonial. I come from the Haudenosaunee Confederacy that has always, since its existence, had its own international law. What we call international law is the recognition of separate but equal nations that include Seneca, Cayuga Onondaga, Oneida, Mohawk and later the Tuscarora Nations. The Peacemaker through the messages of the Great Law of Peace brought these different nations together, which is our international law. The Peacemaker formulated five separate Nations into one Confederacy long before colonization, and long before the existence of the League of Nations, the United Nations, long before Canada, the US. We already knew about peace treaties with other Nations. We had developed treaties through wampum belt protocols, in creating peace treaties. We already had protocol and relationship and an understanding of our sovereignty, if you want to use that English concept. Sovereignty, self-determination, was already in existence.

So, when the League of Nations was forming, we had a leader, his name was Deskaheh. He went to the League of Nations and was appointed by the Confederacy

to ensure that we had a seat as a State at the League of Nations. At that time, there was also already a formulation of colonial ideals, of conquest, of the doctrine of discovery. It was already in existence – the thoughts of what international is, according to the colonial states. So, when Deskaheh went to Geneva, he had to organize himself with the States who would listen and who would allow him to speak at the League of Nations. The process was very political and because the Haudenosaunee Confederacy was not recognized as a state, Deskaheh found the support of Persia to speak. However, the control of politics came in and the UK became involved, Canada became involved, and basically they said 'No, you're interfering in our domestic relationships with Indigenous Peoples.' They didn't allow Deskaheh to speak. Already, there's a conflict, that created another conflict. So, the way that international law is formulated at the present time is based on these colonial principles.

Jeffery G. Hewitt: Can I add to that? Yes, to everything Bev has said. And, I think that the genesis of what we now know as western international law started as *The Peace of Westphalia*, where Crowns of Europe for the first time are brought together in what was then known as the Holy Roman Empire. In this space, the Church brings the Crowns together because there is war – lots of war for resources and land. And this is the first time where the Crowns come together to resolve their disputes all at once. The result is *The Peace of Westphalia*. This is the first document that gets signed as an international document. In Europe. So, I'd say from there, it evolves the way Bev has described.

We also have another element of international law that draws into treaty-making. Treaty-making with the crowns and Indigenous people where, at international law, you don't enter into treaties unless you have the legitimate authority. So, the idea of domestic treaties comes after the treaties were actually signed in what's now Canada. But at the moment of signature, in order to have standing to execute the documents that allow people to live and share, there had to be recognition at international law. When we fast forward in time to the League of Nations, when Bev is talking about this moment that Canada interrupts the Confederacy having standing by saying you're interfering with our domestic Indigenous People, this is the moment where we can see on the record that Canada has long been transforming this recognition of Indigenous nations as Nations into something else; something domestic to be oppressed and suppressed. So, the practice has continued. From that doctrine of discovery Bev discussed to where we see the Church give authoritative imperative to move forward with the taking of lands and resources, which happens through this international law process of treaty-making and the doctrine of discovery.

But there is another narrative. Cree people already had ways of practicing international law; of engaging with different nations as neighbours, and further away than neighbours. We would often enter into international relations through ceremony. Which is precisely what happens at Westphalia. Crowns come together through ceremony. And so, there is another whole stream of narrative law that is developing from Cree People, outward with their neighbours. Trade relations are also set out through international engagement. There is also a whole other way of being and recognizing international law that was practiced in advance of contract. For me, I think it goes back further to this moment where the Crowns of Europe signed the treaties of Westphalia in Latin, which is a language that none of those Crowns themselves spoke in the countries over which they were sovereign, but it was the language of their host, the Holy Roman Empire. And so there is this moment where there is a recognition that international law can be something different. France doesn't have to agree with Germany or Belgium to be able to come together in some framework of international law to recognize there is another kind of language that we have to engage with to be neighbours.

It isn't much long after that when 1763 arrives with the Royal Proclamation, and then 1764, the Wampum at Niagara comes. But that is from the Crown to Indigenous People, not the other way, which is making sense inside a bigger international law framework because there is wampum that is an international agreement between the Crown and certain Indigenous Nations. The English Crown recognized that Wampum-making is a form of international law that they can engage in. The same way they could sign the Treaty of Westphalia in a language that wasn't English. So, there are ways of seeing law and international law. And then, there is a consistent practice of denying its existence after agreements are signed to be able to engage in lands and resource extractions.

AB: Sylvia, this first question is about international law and what it means to you. Bev has talked about that split between colonial-state-international law and Jeff has talked about Indigenous international law, which includes nation-to-nation relations. Before getting into the advocacy stuff and alliances, what does international law mean to you?

Sylvia McAdam: International law is about conquest, domination, dehumanization. We see this over and over again as Indigenous Peoples turning to the United Nations, even the origins of the United Nations are problematic. Created from the League of Nations, and if you research the author of the Charter of Human Rights, you'll see that it's the prime minister from South Africa. His name was Jan Smuts. The reason

why he created the Charter of Human Rights is to protect the white race. Nowhere in that creation of human rights did the dialogue ever include Indigenous Peoples. So, the origin of international law is extremely problematic, dehumanizing, and its processes are meant to dominate and oppress. So, you begin there with already a really horrible start. And then you try to solve or address Indigenous – and I use the word sovereignty, but that's the colonizer's language. Nowhere in any of international law have they ever even talked about Indigenous sovereignty.

So, on the ground, when laws are passed *or* Indigenous People win cases, and we do win cases. Time and time again we have won cases, if you can call them a victory. But they are never applied on the ground. We don't see them honoured on the ground with the grassroots people who are face-to-face with colonial structures such as the police, the conservation officers, security, even in the malls. So, on the ground, when you're an Indigenous person, or Brown or Black body, maneuvering through these colonial structures, you're on a micro-scale, everyday, having to deal with white supremacy, racism, white privilege, and sexism, and all these things that breed and are enforced, and are entrenched by international law, you see.

People were outraged about the Apartheid in South Africa. Rightfully, they should be. But no one seems to be outraged about the Indian Act here, which is an apartheid system. They're not outraged by the Bureau of Indian Affairs in the United States of America, that's what it's referred to now, but yet, everywhere else, we're outraged and taking action against violations of human rights. Although I don't think Indigenous Peoples should look towards the Charter of Human Rights authored by white men who have origins of white supremacy, I don't think that's where we need to look towards for Indigenous Peoples.

International law is meant to dehumanize and to dominate Brown and Black bodies as well as their lands. If we are to move forward towards the future of nation-to-nation in its most authentic meanings, is *Canada* a nation? When you really look through even the processes, like in Alberta, the province of what is now referred to as Alberta, they use the Torrens system for land title. Now, the Torrens system says that a person who is purchasing property in Alberta, the title has to be a good deed, a good title. And when you look at the definition of a good title, it has to be undisputed. So, how is it that Canada can say to the international world, that their title is undisputed when we constantly, constantly see a long historic resistance to Canada's title from Indigenous Peoples? Not just from Idle No More, but you see the constitutional train, Oka, and all these other ongoing resistances to Canada's title. How can Canada still stand at the

UN and say that they're a nation, when their title is fictional, see? And you take a look at Australia, New Zealand, they're standing on the same grounds as Canada, you know? So, the very origins of what is declared to be international law – its very foundations are based on white supremacy and racism.

AB: Despite everything you've just said about international law, and colonial-state-international law, and how it forces out and seeks to dominate, like Sylvia said, Black and Brown bodies and lands, how have you found that you've still used it, or been forced to use it? And has it been useful?

Beverly Jacobs: Well, I would have to say that since the League of Nations and then the United Nations, that the Haudenosaunee Confederacy has still had a voice there, and a consistent message of sovereignty and self-determination despite the processes and protocols of the UN systems, including the Permanent Forum on Indigenous Issues, and the expert mechanism. We still have representation from the Confederacy at those forums and places. But their message has always been consistent. And then, with the work that I was involved in as President of the Native Women's Association of Canada, I was able to use the international forums as a tool to bring attention to issues at the global stage and embarrass Canada into movement or identification of issues like Missing and Murdered Indigenous Women. And, it's like a gathering place now, where even the work that's being done internally at the permanent forum, for example, but all on the outside are Indigenous people who are now able to gather, to do the advocacy and collaboration work. It's a place where Indigenous Peoples can strategize and support each other on the work that's being done in their own lands and territories. So, when I began to attend the UN permanent forum way back in 2003 and 2004, we had many side events on missing and murdered Indigenous women and gathered Indigenous women from South America, Latin America, and the US. So that also enabled a movement of support in identifying the violence against Indigenous women around the world. That it wasn't just an isolated national crisis, it was an international one. The families also thought that what was happening to them was an isolated incident, and found out it's a global issue, problem and crisis.

Now, coming to where we are with the release of the National Inquiry and calling it genocide which was what our people have been saying all along. It's about the land, the territory, and the loss of connection; the violence that's occurring is all directly related. So, that's how we've been using it. The Haudenosaunee Confederacy has always had what has been called an External Relations Committee, so they have always had someone who is doing this work on the international level, whether it is the

biodiversity, everything that is related to the land and the resources, and politically. They've always had somebody there to address the issues at that level. But it's always words – this is what we're doing – and just continuing to deliver the message. But whether they're actually hearing it or manipulating it, like they like to do at the international forums, Canada especially likes to manipulate the shit that they do in Canada. The way that I described it yesterday, was being in this violent relationship with Canada. And when you're in a violent relationship with Canada, how do we get out of that relationship? How do you get out of a relationship with an abuser? You can't rely on them, because they're going to continue to be abusive. They're not willing to change. That's where this transformative change needs to occur. And they're not willing to do that at the international level. When the international reports have had to make recommendations and requirements for Canada to change its systems, to create protocols for safety for Indigenous women, they've also had these recommendations over and over and over again that Canada has never done. So that's the space where all of this yelling and screaming and banging your head against the wall. And if you continue to do that, it's like, when is it going to stop? It will stop when we reclaim and empower our own laws and practice our own relationship of these laws within our own families, and nations and relationships to land. It's all the same.

AB: Jeff, after all of its violence and origins, how have you found that you still use international law or have been forced to use it?

Jeffery G. Hewitt: I can say how I think we should be using international law, and I think, building off of what Bev has said, one of the other elements of international law that I don't think we've touched on yet is that Western international makes the assumption that the only legal actors are other states in a club of international law also comprised of colonial powers and successor states. But from my understanding of international law as it would be practiced with Cree People, we don't recognize only humans as having agency. And so, there are treaties, and there are also agreements that are interspecies. If you recognize the plant nation, and the bird nation, there are agreements that we have with them. That is international law. And when I think about the words Bev has just spoken, a lot of the violence that international law has inflicted on Indigenous peoples has been what my other colleague [Sylvia] says is the disruption of Cree law. Except, part of what I think the good is, it isn't lost. It's just held in certain spaces. Part of the practice of international law comes through not only a way of being, but also ceremony. And I feel like, as I was listening to Bev talk, the better we get at resurrecting or revitalizing and practicing our own international agreements with the other nations that are both human and non-human, part of that helps the men

remember the responsibilities to those other nations and less about finding ways to use violence as a means to claim power. Such ways are not allowed inside those international spaces.

But it also means that the men have to come to recognize the power of women. That women, as it has been explained to me, in our culture are the law keepers, and that the practitioners are the teachers of those international agreements, those interspecies agreements, that help all of us be a healthier nation of people by responding to that interruption that I think is really deep that you talk about. But we don't spend as much time as we could talking about what that means, what that looks like, the practice of it, the ceremony of it and its contribution to upending the violence against women, girls, children, but also bigger families, and the violence against those kinship relationships that include birds, and plants and medicine, through the practice of ceremony. Not through the practice of reading out an international legal agreement, having a general assembly at a space like the UN, where everyone has timed responses to a particular agenda that has already been set. Rather, the practice of ceremony draws everybody in, including those other relations. It is to remind ourselves the way we are to be with each other, and to remind us of those original instructions that started with the development of international law of Cree culture, of Cree people.

AB: It doesn't start from exclusion.

Jeffery G. Hewitt: Yeah. I'll leave it at that…

AB: Sylvia, given everything you said about international law being so violent and dominating for Black and Brown People and lands, how have you still found that you're using, or forced to use, or go to international law, and has that been sometimes a useful tool?

Sylvia McAdam: Well, absolutely. For instance, one of them is UNDRIP. The United Nations Declaration on the Rights of Indigenous Peoples. It's something to refer to, but not defer to. There is a difference. It's something that the non-Indigenous nations can look towards as the most minimum of human rights. And I don't like the term human rights. Humanity of Indigenous people – that's the bare minimum, if anything at all. That is, in a way, good. Also, when I teach my students about international law, I also refer to the document, the Covenant on Political Rights [ICCPR]. I demonstrate to them that Canada keeps reporting on Indigenous Peoples under Article 27, and yet Indigenous Peoples who keep going to the UN report themselves under Article 1. And

if you see in international law, it protects the borders of nation-states. Therefore, international law protects the doctrine of discovery. And in doing so, they have created an oppressive system for Indigenous peoples because now, Canada, for instance, says that the Treaties are domestic. And yet, that's in complete opposite of a document written by UN Special Rapporteur Martinez when he came here to what is now called Canada, and he stated clearly that these treaties are international covenants. So, international treaties are housed in a building in Geneva, Switzerland, when these nations make treaties with each other, that treaty is entered into the UN system. But here, in what is now called Canada, they have taken our treaties that we made with the British crown and created this obscure space called *sui generis*, absolutely refusing to call them international documents – refusing to give our treaties the international nation standard that other problematic, legal fiction nation-states get. So, yes, there are things that we can refer to, but it's only to demonstrate the inhumanity in the dehumanization of Indigenous Peoples that continues today.

AB: For international law scholars interested in critical approaches, like Third World Approaches to International Law, what are some cautions you would give, in light of this ambiguous relationship with international law, in the previous two questions?

Jeffery G. Hewitt: I would say a few things about that. The first is, Kimberlé Crenshaw writes about intersectionality, which has a strong place in critical approaches to international law. And I say that because when TWAIL thinks about engagement with international law without also simultaneously seeking to question, critique and disrupt it, it has a potential effect of furthering the use of international law as a means of oppressing Indigenous People. And so, one of the ways to approach that is scholarship, engaging with Indigenous thinkers in the materials, as they're writing their own work. Thinking about the fundamental disruption of international law because it is *a* system and *a* model that works for the people who invented it. But it doesn't necessarily work for those who didn't, and who weren't at that table. Part of what we've already talked about today is that there are other systems of international law that work for the people that invented those. And so, how are we disrupting even the premise of what we accept as being international law? And how does TWAIL scholarship seek to contribute to that disruption and critique of the current system that seems to be most widely accepted, but isn't necessarily the only actual system.

Sylvia McAdam: Well, if you look at Truth and Reconciliation Call 45(i), it sounds really simple on paper. But yet, when it is given force, and applied and implemented, what then is Canada's standing as a nation?

Royal Proclamation and Covenant of Reconciliation
45. *We call upon the Government of Canada, on behalf of all Canadians, to jointly develop with Aboriginal peoples a Royal Proclamation of Reconciliation to be issued by the Crown. The proclamation would build on the Royal Proclamation of 1763 and the Treaty of Niagara of 1764, and reaffirm the nation-to-nation relationship between Aboriginal peoples and the Crown. The proclamation would include, but not be limited to, the following commitments:*
i. *Repudiate concepts used to justify European sovereignty over Indigenous lands and peoples such as the Doctrine of Discovery and terra nullius.*

AB: No more states!

Sylvia McAdam: Yeah, and same with Australia and New Zealand, and all these other colonies of the colonizer. What then? Because now that the Indigenous People are understanding more and more about the origin of their domination and their dehumanization, they're wanting their freedom. And freedom as understood under international law comes from the ideologies of Athens, and Greece, which is to be obedient to Christianity, and the Church, and to the state. Which is the complete opposite of Indigenous Law. Certainly, Nehiyaw wiyasiwêwina, that's the complete opposite, where our children are raised to have free thought and free will. And that's never to be diminished, oppressed, or any of that. So, what then? When the doctrine of discovery is abolished or rescinded, what then? Because international law will take a huge hit, and it should, it should, given what's happening globally. We're at a crisis now. And when the colonizers first came here to Turtle Island, they were starving. They were dying. They were starving on their own lands because they brought their trees to extinction, their fish, their animals. They were starving when they came here. I've come across documents where a Jesuit came off the ship on a little boat coming towards our lands, the Indigenous lands, and he touched the water, and the water was teeming with fish. Now, the colonizer has brought our lands, this continent called Turtle Island, to its knees. The same legacy that they left on their European lands.

So, if there is anything that we can get out of this interview, it is, if we do not abolish or rescind the doctrine of discovery and remove it from international law as well as domestic law from the colonized Indigenous lands, then we are finished. We are finished as a people, and we have failed to realize that blood memory of those

Indigenous Peoples who still speak of freedom, liberation, and self-determination. That will fail and the future looks pretty bleak.

Beverly Jacobs: So just going back to what I said with the first question, about the differences in thinking about what international law is – so, if we're talking about Third World approaches, we need to understand that their understanding is the colonial, international law, right? They're not understanding the Indigenous understanding of our own international law and relationship to land. So, it becomes about land. Everything that we're always talking about is about land and our relationship to land. So that's what we need from the Third World understanding – their relationship to the land, wherever they are. Because we can now talk, and it has been described on our own territories as Third World countries. Not having water, the desecration of our lands and our territories that Sylvia was talking about. So, they need to become educated themselves about the differences in understanding of that relationship, and their relationship to it, and creating alliances and understanding. Because alliances are important to understanding that relationship that we have with them.