

HUDSON MEDAL LUNCH

This lecture was convened on Thursday, March 30, 2023 at 12:00 p.m., by the discussant, E. Tendayi Achiume of UCLA Law, who introduced the honoree, Antony Anghie of the National University of Singapore and the University of Utah.

INTRODUCTORY REMARKS

I just want to congratulate Tony Anghie for winning the Society's highest award. And I cannot think of a better person to engage in a conversation with Tony than Tendayi Achiume. Thank you so much for agreeing to do this.

Tony, as we know, is a world-renowned scholar who has taught and lectured around the world, from Tokyo to Sri Lanka, from Bangladesh to Britain, to Salt Lake City, Utah. He has long taught in the faculty at the University of Utah S.J. Quinney College of Law and is now also a member of the faculty of the National University of Singapore, the Faculty of Law. And Tony, as we know him, started his career working for the Commission of Inquiry team for the *Nauru* case before the International Court of Justice, which featured prominently in last year's Grotius Lecture by Hilary Charlesworth, "Art and International Law." It is a role that Tony himself filled in providing that lecture in 2010, when his topic was "Should International Law Lead or Follow in Changing Times?" We are still in changing times. He is a founding member of the Asian Society of International Law, with which the American Society regularly collaborates, including in our Global Engagement Series as a preview to this meeting, and he serves as its Secretary General. Tony, of course, is best known for his pathbreaking work, *Imperialism, Sovereignty, and International Law*, and his ongoing contributions to the theoretical, historical, and empirical lens of third world approaches to international law (TWAIL). The Society's awarding of its highest honor to Tony is a reflection of the high regard in which we view both his work and him personally.

Let me turn to Tendayi. Tendayi Achiume is the inaugural Alicia Miñana Professor of Law at UCLA School of Law and former Faculty Director of the UCLA Law Promise Institute for Human Rights. She is a research associate with the African Center for Migration and Society at the University of Witwatersrand and a research associate with the Refugee Studies Center at the University of Oxford. She most recently served, as we all know, as UN Special Rapporteur on Racism, Racial Discrimination, Xenophobia, and Related Intolerance from 2017 to 2022, where she left a mark in shaping the way we think about international law and what we need to do to address and highlight and center the issues of race and racism in the international law field.

At this time, I just want to turn this over to two great friends and two great contributors to international law, Tony Anghie and Tendayi Achiume. Thank you.

INTRODUCTORY REMARKS BY E. TENDAYI ACHIUME*

I am incredibly lucky, as you all can imagine. I am living a literal dream of mine, and I am going to try and rein my enthusiasm in and actually do what I am supposed to be doing here, but you will see me struggling because I can think of no greater honor than to be in conversation with you, Tony, because of how profoundly your work has shaped my own thinking about the world and so many of the people in this room, and even more than that, it is an honor because of how generous you have been to me and again to so many people in this room and so many people in the world, and so any day of the week, it would be phenomenal to be in conversation with you, but today especially. And so the aim of the conversation is for us to see sides of Tony that we might not see from being engaged in his in his canonical work

We had a call to figure out themes that we were going to discuss, but I also promised Tony there would be some secret questions that he has not had an opportunity to think of.

Tony, I think a really wonderful place to start is just hearing from you about how you got into the work that brings us to this moment. What was that journey?

REMARKS BY ANTONY ANGHIE*

There is a Latin saying, *res ipsa loquitur*, the thing speaks for itself. You can see I am pretty overwhelmed.

But let me try and say a few things. Firstly, I would just like to thank the American Society of International Law, the committee which made this somewhat puzzling decision, and really all of you for taking the time to actually be here. I am extremely honored that all of you felt it appropriate to come here on this occasion, and thank you so much, Tendayi, for your wonderfully generous opening comments.

Let me try and address your question: How did it begin? If I had to pinpoint the major stages in this journey, I would say being born in Sri Lanka, that was the first thing. I left Sri Lanka at the age of fourteen, almost fifteen, and that was in 1976. And 1976 was when the Non-Aligned Movement held its major conference in Sri Lanka, just a few miles away from where I lived. My mother, who worked for a think tank called the Marga Institute, sent me a souvenir of the event, the Non-Aligned Conference, the largest conference to be held in Sri Lanka. She inscribed that souvenir saying, "To remind you of your ties with the third world." She had done work on political economy and other issues for this particular institution. So being born in Sri Lanka, somehow connected me with this entity, the "third world."

I think the second thing I should mention is that I was inspired to study international law by Judge Weeramantry of the International Court of Justice, whom I still call "Professor." To me, he will always be Professor, no matter what further distinctions he would acquire. He was an extraordinary man. I could spend the whole event talking about him and his impact on me. But he was somebody of an earlier generation of third-world scholars who had been trying to present a third-world perspective, and in fact, one of his books was called *Equality and Freedom: Some Third-World Perspectives*, that he wrote in 1976. There again, it was this entity the "third world." But he, by his example and his brilliance and his erudition and his sense of fairness, established standards that I could never meet. He was extraordinarily generous to me. So he was a major influence.

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The third thing was, a course I took as a part of my B.A. degree. Frankly, I did not find law very interesting. I was much more interested in political theory and development studies, in history and literature, but well, being part of an Asian migrant community, inevitably, I felt I should follow a safe and respected profession. And so law was the path I followed. Professor Weeramantry suggested that these two things were not incompatible, that a background in all these other disciplines would fit in very well with his vision of international law, which, as I am sure all of you who know his jurisprudence, would appreciate. He had an extraordinarily broad vision of international law. It is not exclusively positivist and doctrinal.

I took a course called “Rich World, Poor World.” But I took it in the politics department, so there we studied dependency theory. We studied Fanon and Paulo Freire and Samir Amin. We studied development theory. These works helped me because I was trying to understand the condition of a country like Sri Lanka.

I did not really understand Sri Lanka. Sri Lanka’s history is very complex. But it stood for me as an archetypal third-world country and questions about poverty, inequality, the impacts of colonialism, ethnic conflict and so forth. That was an important course for me because then when I did study international law, I felt that international law is impoverished, why does it not approach the issues in the way that this other course I took approaches all these issues? I had a deep interest in literature. That led me to develop an interest in post-colonial theory.

At that time, literature by African and Asian writers was called “commonwealth literature,” and there were these books that were printed with red covers. I think it was Heinemann or Macmillan, which published works by Chinua Achebe, Wole Soyinka.

As a result of this background, I wondered what would international law look like if I somehow was able to take the insights of post-colonial theory and political economy, dependency theory, and so forth and apply it in these circumstances?

Then the *Nauru* case was extraordinarily important because that gave me an insight into the very doctrinal, detailed dimensions of an international dispute, which really, in the end, had to do with reparations. Nauru had been colonized. It had been pretty much mined out by Australia while under international trusteeship and it had been trying to get a remedy for that situation. I was fascinated by just how brilliant international law appeared to be in preventing that action from taking place.

Property rights were expanding all the time, beginning with Grotius who addressed fundamental issues about how ownership is going to be decided, property was being defined in all these ways, which were very expansive, but that was simultaneous with the dispossession of the property of non-European peoples, people, like the Nauruans. We have the BBNJ now and I wonder how much that regime is still shaped by ideas of Grotius.

The other important thing about that case was it really was wonderful, because I was able to study all these materials with Professor Weeramantry. To be able to go over all that, it is like studying an arbitration case with Judge Brower. You get a very special insight into what the case was about and the complex issues it raised and how international law addressed them.

Then James Crawford and Ian Brownlie became advisors to Nauru. The whole process of sifting through all the materials, trying to see how all this would be assembled for a case before the International Court of Justice was very crucial for me not only because of all I learn from these brilliant lawyers, but because it made me feel very firmly that we need to understand and be expert in what I would call “classic positivist international law,” that is, law as it is argued before the International Court of Justice.

So I came to appreciate how a complex case would be presented. But because of my other background in post-colonial theory, development studies, and so on, I wondered how this rendering of colonial relations in the ICJ case related to post-colonial theory and political economy.

It is a long story, but the next stage is I was lucky enough to be selected by the Harvard LL.M program, and it was strange because no other school accepted me. I was turned down by Columbia. I was turned down by the Fletcher School of Law and Diplomacy. I was very fortunate that Henry Steiner took an interest in my human rights work. It is very difficult to understand how fate works out, but Harvard brought me in contact with David Kennedy. And of course, he is brilliant. His work was absolutely inspiring because it demonstrated how international law could be completely rethought. He was a wonderful mentor and supervisor because he really went out of his way to understand where I was coming from. He was open to me doing the work I really wanted, and his own pioneering work provided me with a model of how to completely rethink international law. And he gave me complete freedom to develop my own thinking. That is what I particularly wanted from him as a supervisor, really, to have that freedom. He would keep pushing me to articulate what a “Third World vision” would look like.

That, of course, is where I met so many of you who are present today. James, Vasuki, Erika, Alvaro, Obi, Annelise. That was the community that became TWAIL, and this award is really for TWAIL. It is not for me. TWAIL, we believe in collectivities. We do not believe in individualities. If not for the TWAIL community—and its supporters—none of this would have happened.

E. TENDAYI ACHIUME

We are going to talk about TWAIL at great length, and before we get there, I am curious to know from you how you think of what made it possible for you once you got your academic job to get to a point where you wrote *Imperialism, Sovereignty, and the Making of International Law*. I asked that question because our fields do not always encourage us to produce knowledge that is quite so dramatically a break from the conventional take. And so how did you do it?

ANTONY ANGHIE

Well, again, it is wonderful to see so many friends who are part of that process, who helped me in that process. Having that community of graduate students was crucial because they convinced me that the book was important and that I had to keep going with this project. It was not plain sailing. My manuscript was rejected twice by Cambridge, and in a way, that was a good thing—at least the first rejection. The first rejection, I could accept as it were. The second, I felt a bit more doubtful about because I had spent some years working on the materials to try and improve them. But I was able to publish some articles in the meantime, and people felt that those articles made sense. It is as simple as that, perhaps. I would be fired now in almost any law school, because in my third year at Utah, I had written just one article of fifteen pages, which was published in an obscure journal called “Social and Legal Studies” and I had a draft of an article. I would fire me. Now that I am a senior academic I am in the strange position of administering standards, which I would not have met myself. Academia has changed in that way. Utah was crucial because Utah believed in me, and Utah said, look, the upper campus is not at all happy but we believe in you and will support you. I had not been idle. I had been working on Professor Weeramantry’s festschrift, which was a monumental task. It was not an easy thing to get fifty essays together from very distinguished people who are very busy. It was that combination of circumstances that also affected my writing. Utah was very patient with me, gave me time to think and write—and support, I will never forget a senior member of the faculty at Utah, when I first got hired, who came to me and said, “Tony, as far as we’re concerned, you have tenure. We wouldn’t have hired you otherwise, but please help us convince the upper campus.” That made such a huge difference to me to feel I was supported no matter what I wrote—and academic freedom in the best possible sense. We would like to think we have academic freedom in the United States, and we do in a very significant way. But it is so

complicated, this whole issue about the tone you adopt, the strategizing you might have to do, depending on how your faculty is configured, and so forth. And now there is a greater focus on productivity. I did not have any of those concerns. I could focus on my work and take my time. It also helps to be indifferent to conventional forms of recognition. That is how I think I came to write this. Because so many of you here, you know who you are, who provided me with a community, an audience who encouraged me and made me think that what my approach was valid and what I was saying and exploring were important. That community, those people gave me belief, and their work was inspiring to me.

E. TENDAYI ACHIUME

I did some investigation beforehand to ask people who know you well about what kinds of questions they would want me to put to you, and Vasuki had a really wonderful question, which is asking about what your non-law influences were, your literary influences. including for working on *Imperialism, Sovereignty, and the Making of International Law*.

ANTONY ANGHIE

Well, Enid Blyton was crucial for me. Certainly, Edward Said was very important, and oddly enough, someone who was also very important was V. S. Naipaul, who is completely the opposite, of Said, you could say, but who is a brilliant writer. I felt I had to somehow get through V.S. Naipaul. That was a huge struggle because his vision is just so pessimistic and his language is so compelling. The interesting thing, of course, is that Joseph Conrad was central to both Naipaul and Edward Said.

When we talk about writers being inspiring, it is not necessarily inspiring in the sense of 'I want to be like them', but somehow there is something about their engagement with the world that you feel you have to grapple with in various ways. Then, of course, there were, Fanon, Chinua Achebe.

E. TENDAYI ACHIUME

I imagine if we asked everyone in the audience what their favorite Tony Anghie piece of work is, everyone could probably name something, and I was looking at your CV, which is many pages long. But I am curious to hear what is the most personally meaningful thing that you have written.

ANTONY ANGHIE

I felt really exhilarated writing my piece on nineteenth century international law, because I had made a rough argument in my PhD thesis. But, as the reviewer said the first time, the argument is clear, but where is the substance? Where is the material? And that was a point that Annelise Riles—who is here today made as well.

I felt a responsibility, because as Annelise further pointed out, if I did not present the argument about colonialism and international law powerfully and persuasively then I would be doing real damage to the overall TWAIL project, because if I presented a weak version of it, it could be cut down by critics who could point to all the deficiencies of the argument. And that would really discourage people from following that path—I suppose what we might now call the TWAIL path. There was this risk, and I felt a huge responsibility when writing my book.

But doing the nineteenth century article gave me real confidence because I felt the argument was really coming together. There are those moments of exhilaration when you are writing when you feel, "Okay, I've got this. I hadn't thought of this before, but now I can see more clearly."

In more personal terms, I wrote an article on Professor Weermantry's jurisprudence. This was when he lost his re-election bid to the ICJ. And I felt his loss deeply. He was sitting in the cafeteria in the UN building, and I had to go and tell him the news that he had lost the election. It felt very unfortunate, and I felt I had to write this piece to give an idea of what his experience had been, what he has been trying to do, the jurisprudence he had developed and how we should think about him. So I would say those two pieces.

E. TENDAYI ACHIUME

You have mentioned TWAIL a few times, and I would love to hear you describe what TWAIL is. Your sense of it has likely changed over the course of your life. What is TWAIL, and then, also, what does it mean to you personally? Because I think those things could be different things.

ANTONY ANGHIE

So what is TWAIL? I should be able to answer this question by now. One would think. Basically I would say a vision of international law viewed from the perspective of the people of the third world, and there are two dimensions to that. If you see it from the perspective of people from the third world, a perspective inevitably shaped by imperialism, and how would that then connect with the conventional story of international law? It might require rewriting of the conventional story of international law.

But the second thing is how can these people use international law to further their own interests, present their ideas of justice based on what they had experienced? I would say that is my rough, broad, crude account of how we might think of TWAIL. But now TWAIL has developed in all these ways and acquired all these dimensions, which I could not dare try to really describe.

That is why, when we had a conference in Singapore in 2018, as James reminded me, I said this is the end of TWAIL 2, because it is the younger generation now, which has to define it in its own way, according to its own vision and changing times.

What does it mean to me personally? I am so proud of TWAIL, and I have been so fortunate to be associated with it. Just think of it. When James, Vasuki, Chimni, and the others organized a conference in 1997, there was not anything there as such. Now, of course, there was the magnificent work done by early generations of third-world scholars, but the question is how could that work now be revived and rethought in a context of the 1990s when all the debates that had taken place in the 1970s were seen as settled. The third world cause was dismissed by many in the West as clearly intellectually deficient, politically unsound, radically inflammatory, all these things. How could we, in 1997, make sense of all this in the context of the 1990s when that type of work just was not being done?

And now here we are. I think people doing international law would recognize the term TWAIL, and it has encouraged many scholars in the Global South to present their ideas, find their voice. I am really proud of its solidarity. I really feel that TWAIL lived out what the third world should be. I know that sounds arrogant and presumptuous, but the solidarity, the collegiality among the people involved in this is important.

Michael Fakhri organized a conference in Oregon, and I said that TWAIL has no resources and no organizational structure. That is our great advantage. No resources is an advantage because what it meant was we did not have massive funding from the Ford Foundation or whatever it is to hold large conferences where we could invite all these very distinguished people to come and speak. Because we had no resources, we had to create the resources. To me, TWAIL would only succeed if we produced a scholarship that rethought things and that presented an alternative idea of the

world that had a certain coherence. and power. That is the test. Can we produce the work? And if we cannot produce the work, then we should fail, we should end the project. That is the test.

Because it had no organization and was in that sense non hierarchical, it created a sense of personal responsibility. We could not offer a young scholar a fellowship. If you compare us with the New Haven School, the major and famous school created by Myres McDougal at Yale, we did not have those resources. We did not have those facilities. TWAIL was grassroots, and people engaged with TWAIL if it was meaningful to them, and if it was meaningful to them, that would inspire them to do great work.

We had no organizational structure but we were supposed to be the senior people in TWAIL. But I was always asking the so called “junior people,” what do we do? They would take the responsibility to organize the conferences. It started with Obi, with James. That gave us some momentum, but then it was the younger scholars, like this magnificent event organized in Cairo by Usha Natrajan and her colleagues and they took over completely. They told us what to do, and we were happy to follow.

When was organizing a TWAIL conference in Singapore, I was asking, “What do I do?” to them. Because we did not have a hierarchy, people could do what they wanted. But I was really glad of the fact that they felt they had to be faithful to the TWAIL spirit. They would innovate, but there had to be that broad fidelity. It was that solidarity, that camaraderie, that was crucial, and I think what is really important here is none of us was in it for individual advantage or advancement. We did not see ourselves as individually brilliant scholars. We felt ourselves as having a responsibility to this tradition, to this great tradition. We had to renew this tradition, and we had to contest it but also innovate within it and somehow trying, in our circumstances, to provide sufficiently for the next generation to continue on in whatever form.

It was that sense of a collective responsibility that was crucial. Those are all the things that can give you a glimpse of what TWAIL meant to me and how I would describe TWAIL.

E. TENDAYI ACHIUME

We spoke about this when we had our chat, but you had reflected on being a TWAIL-er and doing your work in relation to and within ASIL. And we are at ASIL right now, and I am curious to hear you reflect on that, TWAIL, ASIL, and yourself.

ANTONY ANGHIE

It is a very interesting question which cuts through me. It is like what am I doing in this seat?

E. TENDAYI ACHIUME

Winning lots of medals.

ANTONY ANGHIE

Well I feel strange to be here as some one who has been working on the third world and has few of the traditional credentials of the giants of our field! Of course, there is Professor Abi-Saab who is a magnificent scholar—and a TWAIL pioneer—but he has been in the World Trade Organization appellate body. He has done all these extraordinary things. I have spent my career pretty much at the University of Utah—with some time more recently at the National University of Singapore.

What I really appreciate about ASIL is the way that different members of ASIL have reached out to me. Because of the *Nauru* case, the first person I contacted was Keith Highet, a former

president. Judge Brower might remember that Keith Highet argued the *Southwest Africa* case, and so I went to his class because he taught a course on the ICJ at the Fletcher School. He gave an account of what happened in the *Southwest Africa* case, a notorious case because Judge Percy Spender really reversed the direction of the case. Keith asked in the class: why did Spender do this? Students raised various possibilities, and I think somebody said it was because there was a concern about the possibility that the Aboriginal people might bring a case of some sort against Australia. I said, “No, it wasn’t. It was Nauru.” You see, Spender had actually been administrator of Nauru earlier in his career. He knew exactly what was happening in Nauru, and if *Southwest Africa* had succeeded, Nauru would have been encouraged to bring a case against Australia. Nauru was campaigning for independence at the same time as the case—it received independence in 1968.

Keith had said, “Oh my goodness. I hadn’t really thought about that, I did not know that about Spender,” and he said, “Look, I want you to write a case note on *Nauru*,” because the *Nauru* case—the jurisdiction phase—was being decided in the ICJ. That was my first published work, which was a case note on *Nauru*, and Keith Highet was the person who inspired that and who said, “Tony, you have to write this.” Keith was very important in that respect.

In a different respect Detlev Vagts, was wonderful in a very understated way, he was my teacher, and he was very encouraging. Everybody at Harvard was. Harvard was extraordinary. If you think about the range of approaches at the time I was there. As somebody said, there are five international law approaches. We had Detlev Vagts. We had Abe Chayes. We had David Kennedy. We had Joseph Weiler. We had Ann-Marie Slaughter. Extraordinary if you think about all that.

Those of you who know Professor Vagts know how understated he was, his particular manner, and he was extraordinarily erudite. Abe Chayes was wonderful. And then Tom Franck, Tom Franck brought me into ASIL. I was so glad that Tom was recognized again in yesterday’s superb lecture by Kim Scheppele. All of you know how generous Tom was, and he was my SJD examiner. He did not agree with everything I argued, it has to be said, but I still treasure the copy of my thesis that he marked up with his many comments. He invited me to come and speak at the ASIL. I think I spoke first in 1998 at an ASIL Annual Meeting. It was Tom who really enabled the 2000 conference that Makau Muutua basically ran, which became a complete TWAIL extravaganza. And B.S. Chimni gave the Grotius, significantly on the hundredth anniversary of ASIL. It was Don Donovan who was the chair then, and Hillary was on the committee. There are these people extraordinarily generous in all these different ways.

Tom pushed me to speak at events I found intimidating. We all miss Karen Knop. This is the first ASIL where Karen is not with us. Tom invited Karen and I to respond to Tom Pickering, this very distinguished, eminent statesman, and we thought, oh my goodness, how could we do this? Karen and I supported each other through that ordeal. But this is simply to say that those are just some of the people at ASIL whose generosity and openness were really crucial, and I am glad to see it continues in all these different ways.

E. TENDAYI ACHIUME

In conclusion, Tony, could you reflect on receiving the Hudson medal and where you see TWAIL going? Specifically, given the current geopolitical moment, when we were speaking, you mentioned being on a panel right before the Iraq invasion and giving your analysis then, and we are at a time that feels rather monumental on a number of different fronts, whether we think about the Russia-Ukraine conflict, whether we think about lots of different contexts, you might think about where TWAIL might go. But I am curious to hear where you think it is going, and not just TWAIL the scholarship, but even the third world as a formation.

ANTONY ANGHIE

As to what getting the Hudson Medal means to me. This has, as I said, been overwhelming to me, and I have to admit it has been stressful. I am a Catholic—well, a pretty bad Catholic. I do not believe whatever gifts I have are my own. I struggle to know what to do with my gifts. Thinking about receiving the Hudson Medal, I find it inexplicable because it was never something that I could possibly have even envisaged, if you look at the distinguished people who have gotten it before me and the traditions they represent. I have been really gratified by the comments I have received. Scholars from Asia are saying we feel recognized because of this. I think I might be the second Asian to have received this prize. The first would be Shabtai Rosenne. It has this significance that I cannot come to terms with. But, as I said, it is for TWAIL. Thank you, TWAIL. Now, the future.

The Asian Society conference is going to be held from the 7th to the 10th of August in Bandung, and the opening event is going to be in the same hall that hosted the Bandung Conference of 1955. Why do I say that? Because the world is a mess. I do not think there is going to be an easy doctrinal or institutional fix. I think we are going to need to rethink international law, and of course, we keep saying this. So think of the Bandung movement, because the world of international law, as we know it, is a world that has been made by the great powers, if you think of every major innovation in international law. 1815, it is the victorious powers. 1919, it is the victorious powers after a great power struggle. 1945, it is the victorious powers after a great power struggle. It is Bandung where the rest of the world gets together and says, “We do not want a world constructed by the great powers. We want a world that would recognize the needs of the people of the world, and we represent the people of the world far better than these other institutions and conferences” That was one thing. What would a world be like if it was not driven by the great powers, whether those great powers are Russia, the United States, China, any of these great powers. We need to rethink.

The other crucial thing is I am disturbed by the possibility of a nuclear war. I do not know whether it features much in the ASIL program, but analysts and strategists have been talking about tactical nuclear weapons or strategic nuclear war and this is very worrying. Here I think of a very Washington D.C.-oriented film. It is called “The Fog of War.” It is about Robert McNamara. Please watch that. Because the one thing we know about war is that it is entirely unpredictable, and if we have an unpredictable war and nuclear weapons are going to be a part of it, what could be the consequences?

The anti-nuclear dimension of Bandung is really very powerful, and it goes back to Gandhi in 1947. There was a conference in Asia in 1947, and he said, “The West, now we can see it is a world constructed of nuclear powers, of the fear of nuclear weapons” and that was in 1947. Can we rethink the world independently of the great powers, and how do we deal with the issue of nuclear war? I think those are the crucial issues, but we surely need to rethink the world. And our Bandung Conference is from, 7th through 10th of August.

E. TENDAYI ACHIUME

All right. Thank you. If you could all join me in just giving another round of applause.