

THE LAST COLONY? COLONIALITY AND THE LEGITIMACY CRISIS IN INTERNATIONAL LEGAL PRAXIS

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“The African Union closed the case, forcefully and elegantly. ‘Not a single State argued or opposed the legal principles of decolonization and self-determination’ the legal adviser told the judges. It was astounding, she declared, that so many decades on, *the Court* ‘heard a colonizer and its allies defending colonization.’”

—Philippe Sands, *The Last Colony*¹

I. INTRODUCTION

Phillipe Sands’ insightful and powerful account—of what I refer to as the Chagos islands saga—rendered in *The Last Colony: A Tale of Exile, Justice and Britain’s Colonial Legacy*,² is an important contribution to not just international legal discourse and praxis, but also to popular literature. The book is an excellent work of international legal history, a compendium of robust international legal argumentation, and a handbook on how to move the needle ever so slightly in the direction of progressive international legal change. Given the great importance of the topic it deals with, the studied ignorance and denialism that often greet attempts to highlight that topic, the often overwhelming material power of many of the very states and actors that perpetrate the violations and atrocities that it engages, and Sands’ courageous, expert, and prominent role in helping generate the positive outcomes experienced so far in the Chagos islands saga, this book deserves every bit of the attention it is receiving in this symposium—and even more.

It is against this background that this Essay responds to the theme of the symposium which calls on participants to reflect on Sands’ timely tome. I take up this challenge in this piece, with the aid of a Critical Third World Approaches to International Law (TWAIL) scholarly lens and sensibility.³ What, I ask, would be

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1. Philippe Sands, *The Last Colony: A Tale of Exile, Justice and Britain’s Colonial Legacy* 128 (2022).

2. *Id.*

3. For detailed explanation of the nature of TWAIL scholarship, see Makau Mutua, *What is TWAIL? Proceedings of the 94th Annual Meeting*, THE AM. SOC’Y OF INT’L L. 31 (2000) (explaining TWAIL’s three objectives as understanding, deconstructing, and unpacking international law as medium for racialized hierarchies); James Thuo Gathii, *Alternative and Critical: The Contribution of Research and Scholarship on Developing Countries to International Legal Theory*, 41 HARV. INT’L L.J. 263, 273–74 (2000) (quoting scholarly approaches to TWAIL);

foregrounded rather than backgrounded, or de-eclipsed, were one to train, and zoom in with a TWAIL lens on both the Chagos islands saga and Sands' account of its unfolding, meaning, and impact? In the result, this piece focuses on two deeply interconnected issues/questions that are raised in and engaged by Sands, and which allow me to offer some reflections on two broad themes that the discussions in the book "trigger" in my TWAILian mind regarding the character and orientation of international legal praxis over the *longue durée*. These interrelated themes concern the following: (1) the endurance and operational modes of coloniality; and (2) coloniality's contributions to the legitimacy crisis in contemporary international legal praxis.

Given the nature of these themes, three concepts deserve definition and explanation at the outset—however briefly. The first is the concept of *coloniality* (and not simply colonialism). According to Yecid Ortega, coloniality refers to "colonial vestiges—" that is, the ways in which colonialism sustains itself despite the so-called freedoms gained by previously colonized or oppressed peoples.⁴ This term also engages the colonial matrix of power that has grounded the exploitation of the world and its resources over the last several centuries up to this day, ensuing from colonialism and continuing to exert influence even in our own time.⁵

The second expression that requires explanation here is the concept of *legitimacy* that grounds the analysis in this piece. I rely on a notion of legitimacy that accommodates but extends significantly beyond the Weberian/descriptive type.⁶ The archetype of the latter approach does not adequately capture the external index of belief by the target audience in the reasonableness or acceptability of a status, position, authority, norm, or argument. Thomas Franck famously adopted a kind of Weberian/descriptive approach in his *The Power of Legitimacy Among Nations* in which he argues that:

Legitimacy [in the international system] is the property of a rule or rule-making institution which itself exerts a pull toward compliance on those addressed normatively because those addressed believe that the rule or institution has come into being and operates in accordance with generally

Karin Mickelson, *Rhetoric and Rage: Third World Voices in International Legal Discourse*, 16 WIS. INT'L L.J. 353, 355 (1998) (questioning conventional view of the relationships among Third World states/peoples and international law); Obiora Chinedu Okafor, *Newness, Imperialism, and International Legal Reform in Our Time: A TWAIL Perspective*, 43 OSGOODE HALL L.J. 171, 174–80 (examining from a TWAIL perspective how the tragic events that occurred on 9/11 were mobilized to justify severe weakening in fundamental, constitutional norms of international law).

4. Yecid Ortega, *Trans[cultura]linguación: An Intercultural Approach to the Revitalization of Indigenous Languages*, in HANDBOOK OF RESEARCH ON SOCIO-CULTURAL AND LINGUISTIC PERSPECTIVES ON LANGUAGE AND LITERACY DEVELOPMENT 216 (Angela K. Salmon & Amparo Clavijo-Olarte eds., IGI Global, 2022).

5. *Id.*

6. See MAX WEBER, *ECONOMY AND SOCIETY* 37 (Guenther Roth & Claus Wittich, eds., Max Weber, trans.) (1978) (stating that the most common form of legitimacy is belief in legality); see also 4 TWENTIETH CENTURY LEGAL PHIL. SERIES, MAX WEBER ON LAW IN ECONOMY AND SOCIETY 3–9 (Max Rheinstein, eds., Edward Shils & Max Rheinstein, trans., (Harv. U. Press 1954) (discussing different ways the legitimacy of social and legal orders can be guaranteed).

accepted principles of *right process*.⁷

Given the significant limitations of this broadly Weberian/descriptive approach (as for e.g. when process nevertheless levies grave injustice which then denudes the acceptance of rules or outcomes among the target audience),⁸ the conception of legitimacy that is rather favored here extends much farther into the normative realm by—in addition—attaching itself to established standards of international morality and/or legality. While it is not always clear what these are, and disagreements are rife as to their identity, it is reasonable to at the very least ground these referents for assessing normative legitimacy in the well accepted *jus cogens*, such as the anti-slavery, anti-apartheid, anti-genocide, and pro-self-determination norms. In the end, what this “normative legitimacy approach” does significantly better than the “process-bound model” is that it also accounts for the norm-based sense that an outcome, decision, or rule is reasonable and acceptable.

The third key concept that begs for explanation at the outset is the idea of *international legal praxis* that shapes the discussion in this piece. Praxis, a key term within this phrase, refers to one notion or the other of the “inherent unity of thought and action,”⁹ and of “the inseparability of theory and practice,” or, as Claire Cutler has also put it, “the immanent unity of material and ideational conditions in a historical process of becoming.”¹⁰ Thus, as it is used in this piece, international legal praxis refers to the inseparability of international thought/theory from international action/practice. The latter feeds the former and vice versa.

In order to systematically develop my reflections on the book at issue, this Essay is organized into four segments, this introduction included. Next, my reflections on the issues of the endurance and operational modes of coloniality in contemporary international law that are engaged by both Sands’ book and the Chagos islands saga are explored in Part II of the paper. Part III is then devoted to a consideration of coloniality’s contribution to the legitimacy crisis in international legal praxis, a theme that both Sands’ book and the Chagos islands saga also trigger in my TWAILian mind. The piece ends in Part IV with some concluding remarks.

7. THOMAS M. FRANCK, *THE POWER OF LEGITIMACY AMONG NATIONS* 24 (1990) (emphasis added).

8. See Obiora Chinedu Okafor, *The Concept of Legitimate Governance in the Contemporary International Legal System* 33 NETH. INT’L L. REV. 33, 35–40 (1997) for a discussion on the Weberian paradigm of legitimacy and its relation to justice.

9. See E. Jouannet, *Koskenniemi: A Critical Introduction* to MARTTI KOSKENNIEMI, *THE POLITICS OF INTERNATIONAL LAW* (2011) 1, 3 (noting the inseparability of theory and practice in Koskenniemi’s work); see also Vincent Mosco, *The Political Economy of Communication* 34 (2009) (discussing the deep roots of praxis in history of philosophy); see also Obiora Chinedu Okafor, *Praxis and the International Human Rights Law Scholar: Toward the Intensification of TWAILian Dramaturgy* 13 WINDSOR YEARBOOK OF ACCESS TO JUSTICE 1 (2016) (writing on scholars’ socio-economic and political struggles outside academe and advancing those struggles in the Third World through close engagement with certain international institutions and activists groups).

10. See Claire Cutler, *Toward a Radical Political Economy Critique of Transnational Economic Law*, in *INTERNATIONAL LAW ON THE LEFT* 199, 216 (2008) (writing that progressive praxis conceives of law as a historical force that effectively gives rise to oppressive and emancipatory social forces).

II. THE ENDURANCE AND OPERATIONAL MODES OF COLONIALITY IN CONTEMPORARY INTERNATIONAL LEGAL PRAXIS

A. *The Endurance of Coloniality in International Legal Praxis*

To my mind, this is one of the key points that is developed in, and runs through, Sands' tome. For, if coloniality denotes the ways in which colonialism sustains itself despite the freedoms allegedly gained by previously colonized or oppressed peoples, as *The Last Colony* well demonstrates,¹¹ perhaps little else of recent occurrence signifies, dramatizes and denotes as well, the endurance of coloniality in contemporary international legal praxis, as Britain's avoidance of any significant international legal sanctions or enforcement measures for its behavior in the Chagos islands saga. For example, its leadership has not been subjected to visa bans; no yacht belonging to any of its billionaires has been confiscated as yet (and few expect this to ever happen); and it has not been suspended from any U.N. body. Indeed, on the whole, it has maintained a remarkably high degree of respectability in the world of international affairs. This remains true despite its loss, for the first time ever, of its conventional judicial seat on the International Court of Justice (ICJ). This *de facto* "state immunity" enjoyed by Britain over such infractions has endured despite its very long history of covert and overt resistance to the anti-colonial effort,¹² its longstanding violations in that regard of U.N. Resolution 1514 (XV), and its brazen and unapologetic flouting to this day of the governing international legal positions on the sovereignty of the Chagos islands and the right of return of the Chagos islanders.

As Sands tome also highlights the governing international legal positions are the ones stated in the decision of the ICJ in the Chagos islands case in which Britain's claim to sovereignty over the Chagos island was held to be unfounded in international law. The illegality of its continued occupation of the Chagos islands was held by the ICJ to date back several decades to the adoption of U.N. General Assembly (U.N.G.A.) Resolution 1514 (XV) of 14th December 1960; an originally non-binding but widely accepted text that passed soon thereafter into customary international law. This international legal position is reinforced, to a degree, by certain resolutions of the U.N.G.A. that are well discussed in Sands' book.

As importantly, it appears that the Chagos islands saga is just one of many instances that demonstrate and illustrate the fact that, for centuries now and to this day—and despite the very significant triumph of decolonial international legal reasoning in key international legal texts such as U.N.G.A. Resolution 1514 (XV), the Chagos Islands Case, associated U.N.G.A. Resolutions, and a host of other U.N. texts and even measures—absent strong great power incentives—the tendency has been for the world to take less than robust action to redress or prevent, as much as can be expected, the continued dispossession or abuse of all-too-many colonized/oppressed peoples. Other than the Chagos islands, other situations easily come to mind: Spain still occupies a strip of North Africa; Morocco (aided by Trump's regime) refuses to give up the lands of the Saharawis; despite French

11. See, e.g., SANDS, *supra* note 1, at 71–107.

12. *Id.*

President Macron's apologies and promises—*francafrique* endures to this day;¹³ Israel's grip over the Palestinians and their lands has tightened and not lessened in our time; and the framework governance powers of most of the Global South continues to reside in external actors and institutions (such as the International Monetary Fund and the World Bank).

When one imagines what would happen to almost any Global South country which without a very powerful benefactor State dares to commit the kinds of grave violations that Britain has in relation to its continued illegal occupation of the Chagos islands, and then continues to defend it so robustly today, this point would become vividly illustrated. The reputational and material damage that would be inflicted on that Global South country by powerful, largely Western States, in both media and academia—including (paradoxically) those of British pedigree—would very likely have been much harsher. More specifically, the effect it would have on our imagination of that country's relationship to the rule of law would have been far more negative. The likelihood of robust unilateral or multilateral coercive measures being levied against that country would have been much higher. Such a Global South country, would—in general—learn very quickly that its place in the world is not to be a colonizer and that the exclusive club of empires continues to be reserved largely for certain powerful States, in part through the constitution and operation of international legal praxis.

This illustrates the endurance of colonial vestiges, the rough division of the world into those who can, more or less, get away with colonial dispossession and abuse, and those who mostly cannot (i.e., coloniality). The seeming weakness of international legal praxis in ending such dispossession and abuse by the more powerful States while exhibiting far more strength in reigning in weaker countries is also indicative of the endurance of coloniality in our discipline.

B. Coloniality's Modes of Operation in Contemporary International Legal Praxis

If coloniality (i.e., the colonial matrix of power that has grounded the exploitation of the world and its resources over the last several centuries up to this day) endures in contemporary international legal praxis, supported by the character and orientation of much social, economic, and political thought and action, what are its specific modes of operation? Quite a lot is also known in the social sciences and humanities about coloniality's modes of operation today. And thanks to the work of TWAILers and other decolonial international legal scholars a lot is now known about colonialism's ways and means in the specific field of international legal praxis.¹⁴ Yet, we still do not know enough about coloniality's modes of operation in international legal praxis *today* (i.e., the operational "apparatus-behavior" that it *currently* constructs and deploys within this field). Here again, Sands in *The Last*

13. This policy is the signifier and embodiment of France's less formal empire over most of "Francophone Africa."

14. See generally, ANTONY ANGHIE, *IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW* (2005).

Colony offers important insights. I tease out many of these in this section to reinforce and supplement them from a TWAIL perspective. In my view, coloniality deploys the following modes of operation in our time, exhibiting remarkable continuity (but also significant discontinuity in the detail) from its ways and means in times past.

1. Brazen Power Plays

The Chagos islands saga and Sands' book affirms a reality (one that is well known to TWAILers and other decolonial scholars) that much like the formal colonialism of yesteryear, the coloniality of today still depends on the brazen deployment of (or realistic threat of using) material and ideational power to sustain itself, including in international legal praxis. Indeed, this is an essential (though on its own insufficient) component of coloniality's operational apparatus-behavior. The material power commanded by Britain (and its U.S. ally) is a key reason that it is able to occupy the Chagos islands to this day against the dictates of international law, and despite having roundly lost the international legal battle for that territory.

To understand this point more fully, one only has to substitute Britain with almost any Global South country as a figure in one's imaginary of the Chagos islands saga. Imagine as well that this Global South country has no great power-enabler backing its occupation. It would become clearer as a result that it would have been near impossible for that country to continue to hold onto the Chagos islands for as long as Britain has in outright defiance of international law. It should of course be remembered that power is relational, and so the Global South country can exert power over another such country. Thus, countries such as Iraq, Indonesia, and Morocco have at various times occupied even weaker countries. However, the overwhelming tendency has been that these countries have suffered far more for such misconduct that Britain has or will ever. And, in any case, even the very few exceptions to this tendency do not make the rule.

2. Self-Referential Illogic

Another key component of coloniality's apparatus-behavior in our time is its incoherent but nevertheless successful deployment of self-referential illogic to justify and sustain itself, including in international legal praxis. As Antony Anghie has taught us, this technology is a holdover from the era in which formal colonialism dominated the globe. To illustrate, let us consider the question of how Britain even came to originally exercise control and claim sovereignty and legal title over the Chagos islands (i.e., even before U.N.G.A. Resolution 1514 (XV) was passed on 14 December 1960 and later became binding customary international law). The answer that is usually offered is that it was lawful in the international law of the period before the adoption of this U.N. Resolution to invade, occupy, and colonize other lands and peoples.¹⁵ And the so-called doctrine of inter-temporal law is usually referred in support of this claim.¹⁶ Yet, the clearly unresolved question is *whose*

15. Legal Consequences of Separation of Chagos Archipelago from Mauritius in 1965, Advisory Opinion, 2019 I.C.J. Report 95, ¶¶ 132, 133 (Feb. 25).

16. See ALEXANDER ORAKHELASHVILI, AKERHURST'S MODERN INTRODUCTION TO INTERNATIONAL LAW 149 (8th ed. 2019).

international law is being referenced?¹⁷ The colonizer's or the colonized? What is in fact being referenced, at least in relation to the period before 1945, and definitely in regard to the era during which almost all the colonial encounters between European and Third World States occurred, was in fact basically inter-European law. That European colonizers would assume that their law applied in their encounters with non-European peoples, and that the converse was not the case, was quite simply the height of self-referential illogic. Yet, this illogic has made it into most of international law's textbooks and remains in them to this day! Even the powerful and progressive ICJ Advisory Opinion in the Chagos Islands Case, steeped as it still is in mainstream international legal discourse, is not completely free from this illogic.

3. Playing "Fast and Loose" with the Rules

Yet another component of coloniality's apparatus-behavior, one that Sands' book teases out quite frequently, prominently, and effectively¹⁸ is the way in which "playing fast and loose" with the international legal rules has always been, and remains, essential to its enjoyment of a form of success and remarkable durability. As Sands notes, in the South West Africa Cases (Liberia & Ethiopia v. South Africa), the Pakistani judge on the ICJ at the time was unduly pressured to recuse himself by the then Australian President of that court and the then British judge, so as to shape the pro-colonialist outcome in that case.¹⁹ Discussing the dominant orientation of Britain's behavior in the process leading up to the severance of the Chagos islands from formally decolonized Mauritius and ever since then, Sands notes that "legal minds in London were instructed to concoct arrangements to avoid a charge of lawlessness."²⁰ There were, of course, some British legal advisers who opposed this approach, but clearly their views did not prevail.²¹ Elsewhere, Sands reports another iteration of the approach that prevailed, which is that Britain "could make up the rules as we [the British] go along."²² Indeed, it did. Sands also discusses another way in which Britain has attempted to play fast and loose with the rules in relation to the Chagos islands: This is what Sands refers to as the ways in which it has more recently sought to harness and subvert the global sentiment and laws in favor of environmental protection to extinguish forever the Chagossians' ability to return to their lands.²³ As these three references in Sands' *The Last Colony* aptly illustrate the

17. See Obiora Chinedu Okafor & Chikezi Igwe, *Twisting the Bakassi Case: Colonialist Logic, Self-Determining Agents and the Concept of Legitimate Statehood in Our Time*, in SHIELDING HUMANITY: ESSAYS IN HONOUR OF JUDGE ABDUL KOROMA 85, 95 (Charles Chernor Jalloh & Olufemi Elias eds., 2015).

18. See SANDS, *supra* note 1, at 45 (writing that while some lawyers in London were uncomfortable with the deportation scheme, others were entirely comfortable with presenting the fiction that Chagossians hadn't permanently lived there).

19. *Id.* at 36–38.

20. See *id.* at 41 (discussing in context of London and Washington's secret talks and plot in attaining some of Mauritius's islands).

21. *Id.* at 45.

22. *Id.*

23. *Id.* at 88–90.

point being made here, it will not be elucidated any further.

4. Eyes and Hands Squarely on the Till

Like formal colonialism, coloniality's eyes remain firmly focused on the Global South's tills, (i.e., its material and other resources including lands). And coloniality's hands are almost always focused on reaching deep into the Global South's pockets. As is well known, this element within its apparatus-behavior has always been essential to its operations from the era in which formal colonialism was dominant. It is no wonder then that, as we have seen, one definition of coloniality has described it as "the colonial matrix of power that has grounded the exploitation of the world and its resources over the last several centuries up to this day, ensuing from colonialism and continuing to exert influence even in our own time."²⁴ As such, it is unsurprising that even at the very point of the decolonization, Britain plotted with the United States to seize the Chagos islands from Mauritius and make it into their property. In their minds, their need to have this property had to prevail at all costs over the humanity, lives, and rights of the people whose land it rightfully was.²⁵ While the details might differ, this is not all that different from what Britain did at the point of formal decolonization to, say, other African countries and is certainly in line with France's *francafrique*. And to this day, although the ways and means employed to achieve this might differ in the detail, most former colonial powers continue to benefit immensely from control or exploitation of Africa's vast resources.

5. Dismissal of Resistance Logics as Mere Emotion

Another component of coloniality's apparatus-behavior, one that also enjoys continuity from the era in which formal colonialism was dominant, and is rather familiar to the TWAIL eye,²⁶ is its tendency to dismiss anti-colonial resistance logic as mere emotion. In *The Last Colony*, Sands teases out at least one instance in which the British complained at the U.N.—at a crucial moment of decolonization for that matter—that much debate on colonialism was based on emotion rather than reason.²⁷ That this kind of claim emanated from a diplomatic representative of a country that participated very heavily in purveying the kind of self-referential illogic discussed above is quite remarkable. However, what is more important about it is its illustration of the ways in which pseudo-appeals to reason tend to be deployed by colonizers to counter superior legal or moral anti-colonial logic, a point that is well made in Karin Mickelson's work.²⁸ Importantly, to this day, decolonial international law scholars and practitioners continue to encounter this operational mode of coloniality in their work.

24. See Ortega, *supra* note 4.

25. See SANDS, *supra* note 1, at 32–33, 71 (discussing use of legal power for illicit purposes of deporting Chagossians).

26. See Karin Mickelson, *Rhetoric and Rage: Third World Voices in International Legal Discourse*, 16 WIS. INT'L L.J. 353 (1998).

27. SANDS, *supra* note 1, at 32.

28. See Mickelson, *supra* note 26.

6. Overall

On the whole, one of the insights that can be gleaned from the Chagos islands saga, Sands' book, and the discussion in this section is the remarkable continuity over centuries, amidst the palpable discontinuity of the formal end of colonialism, of the deployment by colonizers of most of colonialism's modes of operation. This is an important affirmation of the insights of TWAILers and other decolonial international legal scholars. Amidst significant discontinuity, one can trace the continuities of Britain's deployment of many of the same strategies, tactics, and maneuvers over the centuries in the Chagos island saga. Sadly, however, even today, one cannot accurately claim that Britain stands alone in the tendency to deploy these modes of operation that advance and sustain coloniality.

III. COLONIALITY'S CONTRIBUTION(S) TO THE LEGITIMACY CRISIS IN CONTEMPORARY INTERNATIONAL LEGAL PRACTICE

The fact that international legal practice has been experiencing legitimacy crises of one kind or the other, stemming from a number of tensions, contradictions, and aporias that afflict it, has long been noted in international legal scholarship.²⁹ As such, this specific point will not unduly detain us. Nevertheless, it is important to offer a brief idea at the outset about the specific kind of legitimacy crisis in international legal practice that concerns us here. In this paper, reference to a legitimacy crisis in international legal practice refers to the denudation of the compliance pull of, and the augmentation of skepticism about, international legal practice, that stems from the incoherence of many of the arguments that attempt to construct and portray that practice as, on the whole, reasonable, fair, just, and/or acceptable.

Given the main task at hand in this section, the focus here is on the contribution of coloniality's endurance and modes of operation *today* to this kind of "legitimization crisis-producing incoherence" in international legal practice. This discussion is undertaken through a brief consideration of one ongoing situation that illustrates some of the tensions, contradictions, and aporias in international legal practice (as highlighted in the Chagos islands saga and engaged by Sands' *The Last Colony*).

Only a year or so ago, almost all of the world rose firmly (as they ought to) against an invader country (Russia) and, among other things, justly condemned and acted against the illegality of its attempts to acquire or retain by force the whole or a part of the territory of another state (Ukraine). Western (and other) states have acted very robustly to counter that country's aggression, deploying a vast array of material and ideational resources to counter this illegal action. Yet, Britain's forcible occupation of the Chagos islands, despite the tenor of the ICJ's advisory opinion in

29. See, e.g., Thomas M. Franck, *Why a Quest for Legitimacy?*, 21 U.C. DAVIS L. REV. 535 (1988) (laying a groundwork for international legal analyses of the function of legitimacy in the international legal system); Obiora Chinedu Okafor, *Is There a Legitimacy Deficit in International Legal Scholarship and Practice*, 13 INT'L INSIGHTS 91 (1997) (arguing that true test of international system's legitimacy is experience and opinions of everyday citizens affected by its decisions, especially in Global South).

the Chagos islands case and several U.N.G.A. resolutions condemning its grossly illegal action and requesting it to vacate those islands, has not elicited anything close to the same level of outrage or robust action from these same states. It is true, of course that only very few states argued in favor of Britain's occupation of these islands at the ICJ. It is also true that the ICJ's advisory opinion was crystal clear about the illegality of Britain's occupation of those islands and that ICJ judges voted decisively to endorse this position. It is also true that support for UNGA's resolutions condemning Britain's occupation of these islands grew following the issuance of the ICJ's advisory opinion. Sands' book effectively discusses all these facts.³⁰ What bears emphasis here is that coloniality (read as "colonial vestiges") played a significant role in ensuring that the global (especially Western) reaction to Britain's occupation has been offered in much lower decibels than the global reaction to the invasion of Ukraine. After all, is coloniality not defined as the colonial matrix of power that has grounded the exploitation of the world? This kind of incoherence, induced and advanced in part by the operations of coloniality in our time, is not isolated, but pervades international legal praxis, hence the significance of the legitimacy crisis it has helped generate within that body of thought and action.

It could be argued by a skeptic of the argument that has just been offered that Russia's invasion and occupation of parts of Ukraine evoke and engage great power contestation, a proxy battle, and the possibility of nuclear war, and that this justifies the greater outrage exhibited by Western governments and audiences in that regard, vis-à-vis the Chagos affair. While this is partly true, it does not meet the point made earlier that coloniality has helped devalue the sense of harm that appears to have been deeply felt by Chagos Islanders, Mauritians, Africans, and the vast majority of the rest of the world. It also does not meet the point that this devaluation of the fact and experience of harm in regard to the Chagos Islanders and their moral allies, wrought in significant measure through the operation of coloniality, has contributed to the vastly different reactions of Western powers (at least until very recently) to the continued illegal occupation of the Chagos islands by Britain.

The foregoing discussion does not merely problematize the familiar invader/occupier vs non-invader/occupier binaries into which the world is all-too-often divided in international legal praxis (not necessarily in international law text), it deeply troubles other such binaries. These include binaries such as that between the perpetrators of crimes against humanity vs. non-perpetrators; pro-rule of law states vs. anti-rule of law; and human rights violator states who do not deserve seats on the UN human rights council vs non-violators who truly deserve these seats. To what side of these divides does Britain belong, one must ask? The suggestion here is that despite a long history of committing or supporting grave violations against the Global South the typologies that constitute these false binaries almost always favor the Global North or at least Western great powers to the detriment or disadvantage of the Global South.

Even when they behave in similar ways, Global South States tend to be much more easily assigned to the negative side of these binaries than Global North countries. As such, in the end, one of the important things that these tensions,

30. See, e.g., SANDS, *supra* note 1, at 135–39.

contradictions, incoherence, and aporias that characterize the false binaries outlined above indicate is that, as I have argued elsewhere,

what is most evident from these developments is the law's historical tendency to reflect and respond more effectively to the economic [political, social and other] worries and demands of the North, and to be at the same time much less responsive to the socio-economic [political, social and other], challenges facing most African [and other Global South] peoples.³¹

This is a key source of the prevalent sense in the Global South (an area with 90% of the world's population we must often be reminded), and among many critical internationalists, that international law suffers from a legitimacy deficit.³²

IV. CONCLUSION

This piece has offered some analytical reflections, from a TWAIL perspective, on Phillippe Sands' *The Last Colony*. After defining the key terms that frame the discussion in it, the paper discussed the endurance of coloniality and its operational modes in international legal praxis *today*; teasing out the remarkable continuities that are discernible amidst the significant discontinuity that formal colonialism is mostly over. Thereafter, it offered a briefer discussion of the contribution of coloniality to the legitimacy crisis that afflicts contemporary international legal praxis. One overarching point that was made is that, viewed from a TWAIL perspective, the key message of Sands' book and the Chagos islands saga is that, despite the near-ending of formal colonialism around the world, coloniality continues to operate today in a robust way in international legal praxis by deploying much the same, though not exactly the same, technologies, helping generate certain tensions, contradictions, and aporias within that praxis that have augmented and strengthened the legitimacy crisis that afflicts it.

As Sands' *The Last Colony* reminds us and as the then Legal Counsel of the African Union aptly highlighted during the hearings of the Chagos Islands Case, "so many decades [or rather centuries] on, the International Court of Justice still 'heard a colonizer and its allies [in 2018!] defending colonization.'"³³ In the light of this at once shocking and normalized reality and the massive material and ideational power to shape the world as it likes that tends to be commanded by a matrix of (predominantly Western) global power, one is left with little alternative (if only for the moment) than to affirm the logical conclusion that: colonialism may be dead (in both international legal praxis and the world), long live coloniality!

31. Obiora Chinedu Okafor, *Poverty, Agency and Resistance in the Future of International Law: An African Perspective*, 27 THIRD WORLD Q. 799, 803 (2006).

32. See Okafor, *supra* note 29 (arguing that true legitimacy for international law must come from including the perspectives of citizens of the Global South perceiving it as legitimate).

33. SANDS, *supra* note 1, at 128.