



Third World Approach to International Law

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Abstract

Third World Approach to the International Law is said to be a critical school of International legal Scholarship along with an intellectual and political movement. It is generally said that it is a “broad dialectic opposition to International Law” which generally perceives that International Law is only meant for continuous exploitation of the Third World through subordination of the west and this perception is somehow true if we look at the history of international law. TWAIL scholars have always tried to change the oppressive aspect of the international law through the re-examination of the western foundation and perception of the international law. This paper aims to present the understandings of the third world approach to International law in the modern aspect.

Keywords: third world, historical prospective, modern views

Introduction

While international law originally adopted an attitude of indifference towards colonialism, it eventually ended up justifying and spreading it. In this manner, international law ensured the survival and promotion of colonialism. In simplest terms TWAIL as given by Mutua is “the broad dialectical of opposition to International Law ^[1]”. TWAIL offers theories as well as methods and, as its name suggests, can be best described as an approach ^[2] or rather as a spectrum consisting of several approaches ^[3]. It is an approach drawn from the history of the encounter between international law and colonization. As a distinctive way of thinking about international law, TWAIL is a historically aware approach that, through academic scholarship and discussion, makes innocent third worlds aware of an openly colonizing and dominating first world and works towards eliminating the disadvantages of an underdeveloped in the Third World. Gathii also agrees that “Third World positions exist in opposition to, and as a limit on, the triumphal universalism of the liberal/conservative consensus in international law ^[4].” The study of international law’s universalism has been done through theoretical workouts. Consequently, the new international legal scholarship is able to accommodate novel movements and intellectuals. TWAIL is such a movement. It responds to international law as an imperial project and seeks internal transformation of the conditions in the Third World. Thus, it facilitates the understanding of the relation between international law and the shortcomings of the lesser developed regions.

The emergence of the Third World

The term “Third World” was emerged after the Second

World War when the whole world was once again divided into the two blocks – Capitalist and Socialist. This was the time, nearly 1950s, when the decolonization was on its peak which gives to the birth to 100s of countries both in Asia, Africa and in Latin America. This was the time when the world basically witnessed the cold war between the two superpowers of that time, US and Soviet Union, for the first time. Since at this time, a lot of countries got independence, both the superpower wanted to influence their ideologies to these new born countries. Basically the United States, Western European Nations and its allies represent the First World Countries while the Soviet Union, China, Cuba and other countries which were either the allies of these countries or they were ideologically influenced by them, consisted the Second World.

The Third World basically represents those countries which were neither part of the NATO block or the Socialist block. This terminology basically provided a way to categorize the nations of the world on the basis of its social, cultural, economic and political divisions. The countries of the Third World mainly have a colonial past and these countries were very much exploited by the colonial countries. So basically these countries were had various common features, including underdevelopment and rapid demographic growth, they had sufficient natural resources but they lacked in the technology and also the rising population was one of the main area on which the governments of these countries had to check on ^[5].

The reference of the term “Third World” was originated basically in the eighteen or nineteen century but this term got its real importance when the French economist and demographer Alfred Sauvy ^[6] wrote about this in 1952.

¹ Makau Wa Mutua, *What Is TWAIL?*, 94 AM. SOC’Y INT’L L. PROC. 31 (2000).

² O. C. Okafor / International Community Law Review 10 (2008) 371–37.

³ James Thuo Gathii, “*Alternative and Critical: The Contribution of Research and Scholarship on Developing Countries to International Legal Theory*” 41 HARVARD INTERNATIONAL LAW JOURNAL 263 (Spring 2000), at 273.

⁴ James Gathii, *Imperialism, Colonialism, and International Law*, 54 BUFF. LAW REVIEW, 1013 (2007).

⁵ B.S. Chimni, *Third World Approach to the International Law*, INTERNATIONAL COMMUNITY LAW REVIEW 8: 3-27, 2006, <https://www.jnu.ac.in/sites/default/files/Third%20World%20Manifesto%20BSChimni.pdf>.

⁶ Alfred Sauvy, French demographer, statistician, economist, and man of letters, was founding director of Institut national d’études démographiques and founding editor of the journal *Population*. After graduating from the Ecole polytechnique, Sauvy joined Statistique Générale de France, the country’s central statistical office, predecessor of

According to him the developed capitalist countries constitute the first world. The socialist countries are called the second world. The underdeveloped countries in Africa, Asia and Latin America that were subjected to colonial domination are called the third world.

Some writers categorize the superpowers as the first world. The other developed countries like UK, Germany, Australia and Canada are clubbed together as the second world. The third world consists of underdeveloped countries of Asia, Africa and Latin America. Both definitions have a few things in common. In both classifications the attributes of the third world are one and the same. The third world is defined in both the classifications in relation to the developed countries^[7].

The Third World countries are not basically poor. This group consists of the rich countries like Arabs and also the poor and economically and technologically underdeveloped countries like Bangladesh, Pakistan and also the fastest developing nations like India, Philippines etc^[8]. Some of these countries are the true example of the Democratic Institutions while some of the country has tested every type of governance while some are still ruled by the monarchs.

Historical, intellectual, and ideological context

Despite various appropriations or attempts at domesticating the concept, Third World has always been an uneasy, controversial, and polemical concept, especially to the increasingly sensitive, critical, and rights-hungry intellectuals and elites of the post colonies. Over the years, there have been efforts to coin new terms to replace "Third World." From a communist revolutionary perspective, Mao Zedong^[9] formulated a theory of three worlds in which the First World consisted of the then-superpowers (Soviet Union and United States), whose imperialistic policies, as he felt, posed the greatest threat to world peace. Mao placed the middle powers (Japan, Canada, and Europe) in the Second World^[10].

Africa, Latin America, and Asia (including China) formed the Third World. Others have dismissed the notion of three worlds as inadequate, and have asked for four or more worlds. To some, the Fourth World^[11] should comprise currently under recognized and underrepresented minorities, especially the indigenous "first" peoples of various states and continents. Still to others, only bipolar divisions along lines of physical geography and locality make sense, regardless of the differences and the inequalities that may unite people across physical boundaries or divide those within the same border of the particular country.

To others, the whole notion of worlds is misleading for various reasons. First, it implies an essential degree of

separation between different parts of the globe that is simply not realistic in a globalizing world marked by multiple encounters and influences^[12]. Second, despite the efforts to stimulate and sustain Third World unity in the struggles against various forms of subjection, current obsession with belonging and boundaries have fueled the conflicts undermining Third World solidarity and action^[13]. Third, the increased degree of polarization within a global economic geography, along with the collapse of state socialism, and the insertion of capitalist social relations even among the communist giants of the world (Russia and China), suggest not a reduction but a multiplication of worlds, including the production of material conditions characteristic of the Third World even within First World societies. Fourth, the emergence of newly industrializing countries represents a form of dependent development and a further differentiation of the global economic geography. If globalization is producing Third World realities in First World contexts, it is at the same time producing First World consumers in Third World societies. In certain contexts, globalization has generated levels of poverty and victimhood that best justify the qualification of the fourth world^[14].

Characteristics of the Third World

For decades, TWAIL scholars have challenged the existing international legal system. It has risen even more in the last decade with the work of academicians such as Prof. B.S. Chimni, Prof. R.P. Anand, Antony Anghie, Karen Mickelson, Prof. J. T. Gathii, and Prof. O. Okafor. However, TWAIL scholars do not share the same political, economic or ideological views. Antony Anghie and Bhupinder Chimni have distinguished, what may be referred to as, the old and new schools of thinking into TWAIL- I and TWAIL- II scholarships^[15].

Three main characteristics of TWAIL- I are:-

- Condemnation of "colonial international law for legitimizing the subjugation and oppression of Third World peoples";
- Focus on "sovereign equality of states" and the doctrine of "nonintervention" as protection from renewed imperial interference;
- Stress on the fact that "Third World states were not strangers to the idea of international law"^[16].

Another characteristic of TWAIL-I is "Contributionism". TWAIL-I overemphasizes on contributions by varied communities in the creation of international customs and norms. TWAIL- II does not condemn contributionism but focuses on examination of scenarios, selection of approaches and concepts and equality which transcends the

today's INSEE (Institut National de la Statistique et des Etudes Economiques).

⁷ SHETTY, Vikrant Dayanand. Why TWAIL Must Not Fail: Origins and Applications of Third World Approaches to International Law.

⁸ BADARU, Opeoluwa Adetoro. Examining the Utility of Third World Approaches to International Law for International Human Rights Law. *International Community Law Review*, London, vol. 10, n. 4, p. 379-387, 2008.

⁹ Mao Zedong was the principal Chinese Marxist theorist, soldier and statesman who led his nation's Cultural Revolution.

¹⁰ Retrieved from <https://hyattractions.wordpress.com/2015/03/02/the-emergence-of-the-third-world/>, on June 18, 2018.

¹¹ B.S. Chimni, *Third World Approach to the International Law*, *INTERNATIONAL COMMUNITY LAW REVIEW* 8 (pp. 3-27), 2006, <https://www.jnu.ac.in/sites/default/files/Third%20World%20Manifesto%20BSChimni.pdf>.

¹² *supra* note 9.

¹³ A.A. Fatourous, *International Law and the Third World*, Vol. 50, *VIRGINIA LAW REVIEW*, June 1964, <https://www.jstor.org>.

¹⁴ *Ibid*.

¹⁵ Anghie and Chimni, above n 31, 79, divide scholarship into TWAIL I and TWAIL II. James Thuo Gathii, in 'International Law and Eurocentricity' (1998) 9 *EUROPEAN JOURNAL OF INTERNATIONAL LAW*, 184-191, identifies strong and weak strains of TWAIL. Makau Mutua, in 'What is TWAIL?' (2000) 94 *ASIL Proceedings* 31, 32, also writes about two trends in TWAIL; that of the affirmative reconstructionists and the minimalist assimilationists.

¹⁶ A. Anghie & B.S. Chimni, "Third World Approaches To International Law And Individual Responsibility In Internal Conflicts" (2003) 2 *CHINESE J. INT'L. L.* 77, At 79, <https://academic.oup.com/chinesejil/article>.

size of a community^[17]. Some TWAIL scholar's after critically analyzing TWAIL-I, labeled it as a weak form of scholarship^[18]. In fact, TWAIL-I scholarship is believed to be not only weaker than TWAIL- II but also counter-productive as it does not, speaking broadly, challenge the status quo but allows and strengthens injustices in the prevailing system. TWAIL II has concentrated on international institutions and the impact of globalization. It is posited that the TWAIL discourse is in the process of entering into a new phase post 9/11^[19]. This phase can be understood as one in which TWAIL scholarship must respond to a series of new challenges in a world where terrorism is a serious concern.^[20, 21] David Kennedy describes it as arising "among a generation of scholars in rebellion. Against the tradition of third world engagement with the international legal order associated with decolonization, the UN, and the politics of the nineteen sixties and seventies". TWAIL- II is generally considered as the stronger of the two trends because it gave more consideration to Third World people than the Third World states. Several TWAIL-I scholars from the third world countries showed traces of an anti-western sentiment, which is not what TWAIL aims at.

There is also "TWAIL-III" scholarship which is awaiting recognition. TWAIL-III implies "a linear conception of the history of third World scholarship on international law, a gradual progression towards some glorious enlightened future." Anghie believes that the concept of 'sovereignty' was made in the 'colonial encounter', and this has backed international law ever since. He sums up in his book^[22] "International lawyers over the centuries maintained this basic dichotomy between the civilized and the uncivilized, even while refining and elaborating their understanding of each of these terms. Having established this dichotomy, furthermore, jurists continually developed techniques for overcoming it by formulating legal doctrines directed towards civilizing the uncivilized world. The researcher has used the term 'dynamic of difference' to denote, broadly, the endless process of creating a gap between two cultures, demarcating one as 'universal' and civilized and the other as 'particular' and uncivilized, and seeking to bridge the gap by developing techniques to normalize the aberrant society."^[23] Institutional changes brought upon them by the first world. Foucault examines constituting affect of power, which

is central to his theory of change^[24]. Polanyi's theory for its rich framework of law, social change, and creation of links based on interest and Foucault's theory which studies the relationship between power and knowledge which further provides a way of further understanding the market's influence on the international regime. Both Foucault and Polanyi considered the conflict and power between ever-shifting social actors to shape and be shaped by ideas and institutions^[25].

Movements associated with the Third World.

During the Cold War, the term Third World or Thirdism inspired what came to be known as the "non-aligned movement"^[26] (NAM) a counterweight to the two rivals Cold War blocs, and a kind of international pressure group for the Third World. NAM was founded on five basic principles—peace and disarmament; self-determination, particularly for colonial peoples; economic equality; cultural equality; and multilateralism exercised through a strong support for the United Nations. From the 1960s through the 1980s the movement used its majority voting power within the United Nations to redirect the global political agenda away from East-West wrangles over the needs of the Third World. However, in practice, with the exception of NAM's ant colonialism, about which there could be strong agreement, the aim of creating an independent force in world politics quickly succumbed to the pressure of Cold War alliances. By the 1970s, NAM had largely become an advocate of Third World demands for a New International Economic Order^[27] (NIEO), a role it shared with the Group of 77, the caucusing group of Third World states within the United Nations. Through NIEO, the Third World argued in favor of a complete restructuring of the prevailing world order, which they perceived to be unjust, as the only enduring solution to the economic problems facing them. At the level of UNESCO, Third World scholars waged a war against unequal cultural exchange through calls for a New World Information and Communication Order^[28] (NWICO). In general, the Third World wanted a new order based on equity, sovereignty, interdependence, common interest, and cooperation among all states. Given the economic weakness of the Soviet Union, these demands were essentially directed at the West.

¹⁷ Obiora Chinedu Okafor, *Newness, Imperialism, and International Legal Reform in our Time: A TWAIL Perspective*, 43 OSGOODE HALL L.J. 179 (2005).

¹⁸ James Thuo Gathii, 'International Law and Eurocentricity' (1998) 9 EUROPEAN JOURNAL OF INTERNATIONAL LAW, 184-191, Gathii considers TWAIL I as weak because it fails to challenge the existing conditions and attempts to re-establish a Western regime rather than engage with it for reform. See also Antony Anghie and BS Chimni, 'Third World Approaches to International Law and Individual Responsibility in Internal Conflicts' (2003) 2 CHINESE JOURNAL OF INTERNATIONAL LAW 77, <https://academic.oup.com/chinesejil/article>.

¹⁹ Madhav Khosla, *The TWAIL Discourse: The Emergence Of A New Phase*, INTERNATIONAL COMMUNITY LAW REVIEW, Volume 9, NUMBER 3, OCTOBER 2007. Thuo Gathii, in 'International Law and Eurocentricity' (1998), 9, EUROPEAN JOURNAL OF INTERNATIONAL LAW, pg. 184-189.

²⁰ Makau Matau, *What is TWAIL?* (2000) 94 ASIL, Proceedings 31, 32. He writes about two trends in TWAIL; that of the affirmative reconstructionist and the minimalist assimilationists.

²² Retrieved from <https://kingdomofhawaii.files.wordpress.com/2011/04/anghie-imperialism-sovereignty-and-the-making-of-international-law.pdf>, on June 27, 2018.

²³ *Supra* note 14.

²⁴ Michel Foucault, *The History of Sexuality, Volume I: An Introduction*, (1978) pp. 92–96; Michel Foucault, "Intellectuals and Power", in Sylvère Lotringer, Foucault Live (Interviews, 1961–1984) (1996) pp. 70–82 and Michel Foucault, "Truth and Power", in Colin Gordon (ed.), *Power/Knowledge: Selected Interviews and Other Writings 1972–1977* (1980) pp. 109–133.

²⁵ *Supra* note 22.

²⁶ The Non-Aligned Movement is a group of states that are not formally aligned with or against any major power bloc. In the present time, it has total of 120 members. It was established in Belgrade, Yugoslavia.

²⁷ The New International Economic Order (NIEO) was a set of proposals put forward during the 1970's to promote the interests of the developing countries through the United Nation Conference on Trade and Development for improving trades, increasing development assistance and other means. It was meant to be revision of the international economic system in the favour of Third World Countries, replacing the Bretton Woods System, which has benefitted the leading states that had created it like US. This order was demanded by the NAM.

²⁸ The New World Information and Communication Order (NWICO) aka the MacBride Commission is a term that was coined in a debate over media for the representation of the developing states in UNESCO in the late 1970s and early 1980s.

End of the Third World?

It is very often argued that the category “third world” is anachronistic today and without purchase for addressing the concerns of its peoples. Indeed, from the very inception it is said to have ‘obscured specificity in its quest for generalizability’. The end of the cold war (or the demise of the second world) has only strengthened the tendency towards differentiation. According to Walker, the “great dissolutions of 1989” shattered all cold war categories and ‘as a label to be affixed to a world in dramatic motion the Third World became increasingly absurd, a tattered remnant of another time’^[29]. It can hardly be denied that the category “third world” is made up of ‘a diverse set of countries, extremely varied in their cultural heritages, with very different historical experiences and marked differences in the patterns of their economies. But too much is often made of numbers, variations, and differences in the presence of structures and processes of global capitalism that continue to bind and unite’^[30]. It is these structures and processes that produced colonialism and have now spawned neo-colonialism.

In other words, once the common history of subjection to colonialism, and the continuing underdevelopment and marginalization of countries of Asia, Africa and Latin America is attached sufficient significance, the category “third world” assumes life.

In any case, the diversity of the social world has not prevented the consolidation and Articulation of international law in universal abstractions^[31]. Today, international law prescribes rules that deliberately ignore the phenomena of uneven development in favor of prescribing uniform global standards. It has more or less cast to flames the principal of special and differential treatment. In other words, the process of aggregating in international law a diverse set of countries with differences in the patterns of their economies also validates the category “third world”. That is to say, because legal imagination and technology tend to transcend differences in order to impose uniform global legal regimes, the use of the category “third world” is particularly appropriate in the world of international law. It is a necessary and effective response to the abstractions that do violence to difference. Its presence is, to put it differently, crucial to organizing and offering collective resistance to hegemonic policies^[32].

Unnecessary importance is often attached to the end of the cold war. The growing north-south divide is sufficient evidence, if any were needed, of the continuing relevance of the category “third world”. Its continuing usefulness lies in pointing to certain structural constraints that the world economy imposes on one set of countries as opposed to others. At one point, the arrival of the newly industrializing countries was seen to be a definitive pronouncement on the inadequacy of the category “third world”. But their fate in the financial crisis of the late nineties reveals that the divide between these countries and the rest is not as sharp as it first appeared. Furthermore, as critics of the category “third

world” concede, the alternative of multiplying the number of categories to cover distinctive cases, may not be of much help^[33]. Worsley himself recognized that ‘we can all think of many difficulties, exceptions, omissions, etc. for any system of classifying countries, even if we increase the number of worlds.’ Crow has aptly pointed out in this context that ‘a typology which has as many types as it has cases is of limited analytical value since it has not made the necessary move beyond acknowledgement of the uniqueness of each individual case to identifying key points of similarity and difference’^[34].

Thus, there is an obvious dialectic between struggles inside third world countries and in external fora. There can be little progress on one front without some progress in the other. At the same time, a global coalition of the poor countries remains a viable model of collective resistance. For the aspirations of the people, despite the emergence of the non-governmental organizations, is still most effectively represented by the State in international fora. But the Third World State has to be compelled through people’s struggles to engage in collective action.

TWAIL in the present time

The rapid increase in the number of books, articles, PhDs and papers written on TWAIL is evidence of it gaining prominence, especially among those in the legal profession. Many law schools have even offered courses on TWAIL. The surfacing of TWAIL is proof a step away from the dominant Western vision of the International regime. Leading books and scholars of international law are no longer based for the most part in Europe and North America but from all over the globe. In fact, North American based TWAIL-ers are only a small part of a larger tradition of third world scholarship in international law that dates back decades^[35]. They have addressed several issues related to society, politics, and economics with a primary dedication to democratic values.

But the reason why the most people are still not aware of it is because TWAIL has till now not been a well-structured group with formal membership^[36]. Till December, 2011, mainly five TWAIL conferences were held. These conferences are sometimes referred to as TWAIL I, II, III, IV and V but are not to be confused with the different generations of TWAIL. TWAIL is a spread-out network of scholars, with common ideologies, but no structure of authority. It has operated as a loose network. Okafor says that TWAIL-ers are “solidly united by a shared ethical commitment to the intellectual and practical struggle to expose, reform, or even retrench those features of the international legal system that help create or maintain the generally unequal, unfair, or unjust global order^[37].” Also, students of international law refer to books which may promote the interests of a particular country or support the

³³ *Ibid.*

³⁴ B.S. Chimni, *Third World Approaches To The International Law: A Manifesto*, International Community Law Review 8: 3-27, 2006, <https://www.jnu.ac.in/sites/default/files/Third%20World%20Manifesto%20BSCchimni.pdf>.

³⁵ James Thuo Gathii, *TWAIL: A Brief History of its Origins, its Decentralized Network, and a Tentative Bibliography* 3(1) TRADE LAW & DEVELOPMENT 26 (2011), <https://www.jstor.org>.

³⁶ *Ibid.*

³⁷ Obiora Chinedu Okafor, *Newness, Imperialism, and International Legal Reform in our Time: A TWAIL Perspective*, 43 OSGOODE HALL L.J. 171, 176 (2005), <https://www.jstor.org>.

²⁹ B.S. Chimni, *Third World Approach to the International Law*, INTERNATIONAL COMMUNITY LAW REVIEW 8 (2006) (pp. 3-27) <https://www.jnu.ac.in/sites/default/files/Third%20World%20Manifesto%20BSCchimni.pdf>.

³⁰ A. A. Fatourous, *International Law and the Third World*, Vol. 50, June 1964, <https://www.jstor.org>.

³¹ *Ibid.*

³² Makau Wa Mutua, *What Is TWAIL?*, 94 AM. SOC’Y INT’L L. PROC. 31 (2000), <https://www.jstor.org>.

current world order. Not researching both sides of the argument and not critiquing what one reads is harmful for progressive scholars. In many institutions in the First World countries TWAIL is thought as a 'conspiracy theory', giving the first world countries a posture of innocence because very few professors are TWAIL-ers themselves.

TWAIL and the Iraq invasions

TWAIL has helped tremendously in understanding the legality of the Iraq invasions and the Iraq invasions have in turn helped TWAIL scholars test the strength and weaknesses of TWAIL. TWAIL scholars have argued that theoretical views that take root from colonialism and imperialism are essential for the understanding of the practicality of international law. Colonialization itself was initially justified as a 'civilizing mission' and that it was the duty of the more developed Western states to civilize the Third world states. The narrative of the civilizing mission has shaped the way both the historical and modern discipline has engaged with cultural difference. The central arguments indicate toward a faith that the West has a duty to civilize the failed state, the rogue state and the terrorist, so as to rescue the Third World from its backwardness as well as prevent this backwardness from threatening civilized regions.

Since destroying a nation and attempting to recreate it in accordance to the destroyer's image was a central characteristic of colonialism, the Iraq invasion has raised many questions regarding the nature of TWAIL and international lawyers. Hilary Charlesworth muses that "for a short glamorous moment, international lawyers could feel relevant. We are used to being either ignored or pushed to margins of debates about world affairs, and suddenly everyone was interested in our views ^[38]."

The issue raised was whether preventive defense was justified in such a scenario. In reality, Iraq invasion was not a case of a western country like U.S. seeking to dominate and control against Third World states. It is interesting to note that many of the usual allies of the U.S. spoke sturdily against the invasion, and several Third World countries sided with the U.S. Falk has warned that the recent "post-9/11" terrorist threat does not justify most of the other measures that the Bush administration has taken seemingly in response to the 9/11 attacks, in particular, its invasion and occupation of Iraq ^[39]. It is also worth noting that most of those in the United States who initially opposed the invasion of Iraq have, now lost much political ground to those who supported and executed it ^[40].

In the case of Iraq, the US justified its actions on the basis of Iraq's human rights violations, attacks on its neighbors and non-cooperation with the UN weapons inspectors. The state of lawlessness in Iraq was believed to be a threat not only to the US but other nations as well. The preventive invasion of Iraq to abolish future threats indicated that the US believed, and probably still do, that the laws of self-defense are not to be applied when a nation like Iraq forfeits

the privileges of the rule of law by their very state of lawlessness ^[41].

Conclusion

Concepts which have common goals but varied interpretations and trends are a necessary and inevitable part of approaches like TWAIL that think about broad patterns of dominance and resistance. Whether it be TWAIL I or TWAIL II, both generation of scholars believe that there is a good reason to participate in disciplinary critique ^[42]. Eliminating any paradoxes is an effort which should involve discussions and debates among scholars and a clear understanding of the common good ^[43]. It is also necessary that the scholars have an open mind to new theoretical interpretations, ideas and concepts such as Fakhri's understanding of TWAIL through Polanyi and Foucault. The proposed plan of action for TWAIL includes adopting a policy of seeking legitimacy through defiance in the area of customary international law in a bid to internally transform the discipline of international law without losing sight of the broader objective of fundamentally transforming its very basis. What remains to be seen is whether TWAIL can actually provide the proverbial twist in the tale of international law by freeing it once and for all from the shackles of colonialism.

Nevertheless, we must protect ourselves from the horror of legal nihilism, which TWAIL is many times wrongly associated with. Although, TWAIL scholars have pointed to the bias at the very foundation of international law, it does not mean that we must show disregard towards international law. International law must not be criticized completely but must be appreciated for its virtues as well. It needs to be recognized that the existing international regime also offers a somewhat regulatory shield, however delicate, to the under developed countries. While proper plan of action is essential for progress of the international legal system, it is also to be acknowledged that mere planning and discussion of theory is useless without practical implementation. The success of TWAIL is highly desirable but in no way easy. B.S. Chimni had in the Paris Conference of TWAIL stressed that the TWAIL movement must always be a non-violent one. The challenges facing TWAIL in its endeavors are internal disintegration, the problem of cooperative action among the third world states and the obstacles that developed nations may produce. NGOs that support TWAIL must be organized and voice their opinions clearly. TWAIL's support by local and international NGOs and their social movements may stand for acceptance of a chief substantive characteristic of a globalized and liberal civilization⁴⁴.

⁴¹ See Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (2005) 296, <https://www.jstor.org>.

⁴² Sundhya Pahuja, 'The Postcoloniality of International Law' (2005) 46 HARVARD INTERNATIONAL LAW JOURNAL 459, 460, <https://www.jstor.org>.

⁴³ Philip Darby, 'Pursuing the Political: A Postcolonial Rethinking of Relations International' (2004) 33 MILLENNIUM: JOURNAL OF INTERNATIONAL STUDIES 1, 25; <https://www.jstor.org>.

⁴⁴ B.S. Chimni, *International Law and World Order: A Critique of Contemporary Approaches* (1993), 142; Chimni argues that "It is not unusual to see a Third World scholar speaking of rejecting rules which are prejudicial to the interests of developing countries [yet] embracing a theory of international law and world order which seeks to justify and protect the status quo and has little to say on the situation of the developing world. This eventually leads him to assume positions which strengthen that which he had set out to fight."

³⁸ Hilary Charlesworth, 'What's Law Got to Do with the War?' in Raimond Gaita (ed), *Why the War was Wrong* (2003) 35, 35, <https://www.jstor.org>.

³⁹ Richard A. Falk, *The Great Terror War* (NEW YORK: OLIVE BRANCH PRESS, 2003); See also Richard A. Falk, "Rediscovering International Law after September 11th" (2002) 16 TEMP. INT'L & COMP. L.J. 363, <https://www.jstor.org>.

⁴⁰ Obiora Chinedu Okafo, *Newness, Imperialism, Andinternational Legal Reform Inour Time: A Twail Perspective*, <https://www.jstor.org>.

International law must promote democracy not just at the national but transnational level as well, which will lead to an increase transparency and accountability in the system. Secondly, it is also seen in many states that unemployment increases among the native people because foreigners (generally from less developed countries) migrate there and work for lesser wages. Migration of laborers is another important aspect which the current international law has failed to regulate. Also, people's understanding of the concept of sovereignty is often blurred when international law is referred to. The international organizations and agreements must clearly explain its action plan, its basic principles and what it hopes to achieve in the long run. Lastly and most importantly international law must, in the simplest of terms, focus on the effects of any policy on the individual's life instead of only the relationship of the states.

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