



# THIRD WORLD APPROACHES to INTERNATIONAL LAW *Review*



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TWAIL *Review*

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## THIRD WORLD APPROACHES to INTERNATIONAL LAW *Review*

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### ***Third World Approaches to International Law Review: A Journal for a Community***

*Usha Natarajan, Laura Betancur-Restrepo, Amar Bhatia, John Reynolds, Ntina Tzouvala & Sujith Xavier*

We launch the first issue of the *Third World Approaches to International Law Review* (TWAILR) in the throes of a global pandemic, transnational uprisings demanding racial and socioeconomic justice, a determined worldwide campaign against sexual assault, sexual harassment and patriarchy, and a growing international climate justice movement. At such a time, Third World Approaches to International Law, commonly known as TWAIL, are more important than ever.<sup>1</sup> TWAIL understands each of these challenges not as unforeseen emergencies, but as a long time in the making, and the inevitable result of international law structures of violence against nature, women, racialized peoples, queer peoples, and Indigenous peoples. While international law is, of course, not the only reason such problems exist, TWAIL draws attention to how injustice is enabled and structured through law and its institutions, not only in local and domestic arenas but transnationally and globally. Through identifying the legacies of colonialism, genocide, slavery, apartheid, and the ongoing racial, class, gender, and sexual discrimination within contemporary international law, TWAIL problematizes and breaks down conventional disciplinary distinctions between the national and the international, the public and the private, and the legal and the political. Through broadening our analytical scope in both time and space, TWAIL helps guard against reactive responses and crisis-based thinking, so as to more accurately identify and combat global injustice.<sup>2</sup>

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<sup>1</sup> For contextualization of our use of the term ‘Third World’, see: Karin Mickelson, ‘Rhetoric and Rage: Third World Voices in International Legal Discourse’ (1998) 16:2 *Wisconsin International Law Journal* 353, at 356-362; Makau Mutua, ‘What is TWAIL?’ (2000) 94 *American Society of International Law Proceedings* 31, at 35-36; Balakrishnan Rajagopal, ‘Locating the Third World in Cultural Geography’ (2000) 15:2 *Third World Legal Studies* 1; B.S. Chimni, ‘Third World Approaches to International Law: A Manifesto’ (2006) 8 *International Community Law Review* 3, at 4-6; Sundhya Pahuja, *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (CUP, 2011) 261.

<sup>2</sup> For a recent overview and bibliography of the TWAIL movement, see James Thuo Gathii, ‘The Promise of International Law: A Third World View’, *Grotius Lecture*, 2020 Virtual Annual Meeting of the American Society of International Law (25 June 2020) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3635509](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3635509) (accessed 4 October 2020).

International law and its institutions have primarily served to universalize and normalize Western worldviews and interests, especially related to capitalism, modernity and statehood. In so doing, these laws have failed to effectively address and stem environmental degradation, economic exploitation, sexism, racism, and diverse contemporary forms of injustice. Indeed, international law has instead institutionalized many of these problems and is infinitely reproducing them. The complex and proliferating challenges we face today evidence the inadequacy of perpetual law reform and cyclical disciplinary reinvention, pointing to the need for systemic and foundational change. TWAIL looks to traditions of liberation from the global South, as well as to disciplines outside law, for inspiration as to new and different approaches to international governance in an endeavor to identify real solutions to these longstanding global injustices.

While the TWAIL movement encompasses diverse scholarly agendas, its common aim is to highlight and, more importantly, to undo the colonial legacies of international law in the lives of the peoples of the global South. Since its coming together under the banner of TWAIL in 1997, the movement has grown and flourished through its thoughtful research, international conferences, and mentoring, today encompassing a community of thousands of people all over the world. The *TWAIL Review* is the first continuous publication dedicated to furthering the aims of the TWAIL movement. In a world oversaturated with information, the decision to start a new international law journal was preceded by much thought and debate as to necessity, purpose, and approach. TWAIL scholarship is published in a variety of interdisciplinary venues and this has served us well in terms of outreach and movement building. As our movement grows, our tactics evolve, motivating us to create this new journal dedicated to TWAIL.

For more than two decades, TWAIL has offered explanations for why international law espouses sovereign equality as the world it purports to govern becomes increasingly unequal.<sup>3</sup> TWAIL scholars have helped those on the losing end of global power imbalances understand the role of international law in perpetuating these asymmetries. With TWAIL's growing size and relevance, TWAILers have not only identified global imbalances but have worked together to help remedy them. In this vein, *TWAILR* is a conscious endeavor to intervene in knowledge production about international law and help make our discipline truly international in nature. *TWAILR* is committed to fostering a creative and productive engagement with international law through thinking with the sensibilities of the global South. By silencing or sidelining most of the world, mainstream international law reflects neither the diversity of human experience nor the hybridity and richness of human identity. For much of international law's

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<sup>3</sup> Usha Natarajan, John Reynolds, Amar Bhatia & Sujith Xavier, 'TWAIL: On Praxis and the Intellectual' (2016) 37:11 *Third World Quarterly* 1946.

history, the global South figured as the recipient of international law's military, economic, political, cultural, and moral discipline. Transformation and innovative responses to longstanding global problems are more likely if the discipline includes voices that were heretofore marginalized due to longstanding explicit and implicit biases along the lines of gender, race, sexuality, class, and other markers of difference and exclusion. *TWAILR* encourages amplification of Third World thinking in shaping our disciplinary future. We foster knowledge production about international law that responds justly and effectively to our proliferating collective global challenges as environmental degradation and economic inequality escalate amid systemic racism and sexism.

Our purpose in creating *TWAILR* is to provide a space for critical scholars, mainly from the global South and their allies oriented to the South, to participate in the project of international law, produce knowledge creatively through interdisciplinarity, and push our discipline towards becoming genuinely emancipatory, egalitarian, and international. To enable this, we have eschewed some publication conventions. To remain as accessible and readable as possible, particularly to those in the global South, we do not operate under the auspices of any publishing house. *TWAILR* is wholly online, without a parallel print publication and committed to remaining openly accessible and without any subscription cost. While *TWAILR* begins as an English language publication, it will diversify to other languages when the platform establishes itself and our resources grow. We have an accountable and non-hierarchical organizational structure wherein the editorial collective represents different regions, genders and scholarly paths. The editorial collective will rotate its members from among the TWAIL network. To reflect the plurality of Third World approaches, the editorial collective incorporates perspectives from across the fields of Third Worldist, Marxist and feminist thought, postcolonialism and decoloniality, Indigenous studies and critical race theory, and more.

Our inaugural issue hosts seven substantive articles from scholars covering a range of geographic backgrounds, perspectives, and career stages. Antony Anghie, whose scholarship has been formative for TWAIL, provides an apt prelude. He observes in his foreword that a journal represents a tradition, serving as a reminder that *TWAILR* has a responsibility not only to TWAIL's political agenda but its ethical commitments to nurturing scholars from the global South. Karin Mickelson launches our inaugural issue with the theme of hope, expanding on her keynote address at the 2018 TWAIL Singapore conference. She traces the evolution of hope within the TWAIL movement over two decades, reflecting particularly on the nature of hope in a time of massive environmental change. We could not have wished for a more apposite start to the *Review*, setting a clear-eyed yet aspirational tone, and offering a timely reminder that TWAIL offers solidarity,

mutual support, and indeed hope at a time when despair threatens to overwhelm amid a health pandemic and yet another economic crisis.

James Thuo Gathii and Fabia Fernandes Carvalho Veçoso engage deeply with international law doctrine from the global South, from Sénégal and Argentina respectively, exemplifying what we hope will be many more such analyses in issues to come. Gathii builds on his earlier work on African approaches to international law by appraising the contributions of DouDou Thiam and Keba Mbaye on the right to development. In so doing, he draws out distinct and competing methodologies and politics within African contributions to international law, bringing attention to diverse approaches to international law from the global South as particularly pertinent at a time when the hegemony of the United States is on the wane. Veçoso re-describes the Drago Doctrine that opposes the forceful collection of public debt, articulated by Argentinian diplomat Luis María Drago in the context of the Venezuelan blockade from 1902 to 1903. She analyzes the use of international law in both asserting and resisting hegemonic projects. Through a close examination of Drago's argumentative practices, she sheds light on the establishment of a Latin American regional sensibility in international law amid the divergent strategies of European powers and the United States.

Through the idea of the 'moral economy', Rajshree Chandra scrutinizes the powerful contemporary discourses of environmentalism and innovation that drive contemporary international law and its specializations. Chandra focuses on how these discourses shape international legal technologies that enable the enclosure of the biotic commons – the biogenetic domain encompassing grasslands, forests, plant varieties, seeds, microorganisms, and much more. By reinventing the meaning of a 'moral' economy in the name of an ethic of 'progress' and 'sustainable development', Chandra shows how discourses of environmentalism and innovation in fact mold normative strategies that disenfranchise local communities across the global South, including many Indigenous and Tribal peoples.

In a creatively structured anthropological study, Paulo Ilich Bacca in conversation with anarchist sociologist Silvia Rivera Cusicanqui simultaneously describes and carefully negotiates what Gayatri Chakravorty Spivak has conceptualized as the 'double bind' of coloniality. Together they grapple with a dilemma at the heart of TWAIL: how does one navigate a discipline that is simultaneously universalist and particularist, based on sovereign equality whilst structuring unequal relations between states, committed to human rights yet systemically racist and sexist, hopelessly imperial whilst also the repository of hope for global justice? Bacca and Rivera explore past, present and potential future encounters between Andean Indigenous communities and European colonizers, navigating the meeting between worldviews that are both complementary and contradictory, to offer an epistemological framework that accommodates this double bind.

Ali Hammoudi invites us to turn our TWAIL lens toward the concept of 'semi-colonialism' as a form of informal empire, told through the story of Oman. He demonstrates how the use of protectorates as an international legal device provided valuable flexibility and ambiguity for imperial powers to dominate through 'protection'. The article provides a nuanced understanding of the informal techniques of such domination, and explores how the protectorate device was strategically deployed in the context of geopolitical maneuvering and imperial spheres of influence. By delving into Britain's management of Oman, and the 'Question of Oman' at the United Nations between 1957 and 1965, Hammoudi sheds light on ways that imperial and semi-colonial practices were able to persist even as decolonization advanced. In so doing, Hammoudi makes a novel contribution to a growing body of TWAIL and adjacent critical scholarship on the international legal history of semi-colonialism and the semi-periphery.

Hailegabriel Feyissa's contribution picks up this thread by re-narrating the story of domestic legal reform in Ethiopia. Feyissa convincingly argues that this process of civil law codification cannot be solely reduced to Ethiopia's semi-colonial status under international law. Rather, he shows that Abyssinian elites strategically engaged with international (legal) pressure in order to promote their own interests and values in the peripheries of imperial Ethiopia. By revisiting the process of civil law codification that came to completion in 1960, this valuable piece highlights the appropriation of the infamous 'standard of civilization' by Abyssinia's literate classes and its redeployment against non-hegemonic groups. In so doing, Feyissa reminds us that Third World states have been both subjected to imperialism and engaged in imperialist practices themselves, and that legal reform needs to be understood as the product of this intersection.

As attested to by the scholarship in our first issue, *TWAILR* is committed to the double-blind peer review process that ensures academic rigor and research excellence. Yet we realize that by itself conventional scholarship cannot communicate the full impact of international law on the global South. Thus, in addition this *Review* as a forum for conventional scholarship, in our first year we have also published on our website more than twenty *TWAILR: Reflections* – reflective essays covering a broad range of contemporary issues including climate change, labor migration, asylum, minority protection, fascism, the COVID-19 pandemic, digital colonialism, legal education, religion and law, international criminal law, and the ongoing operations of settler colonialism in Palestine and Australia. Our *TWAILR: Dialogues* series hosts interviews with cutting-edge scholars on their latest research including thus far J Kēhaulani Kauanui, Darryl Li, Noura Erakat and Ntina Tzouvala. We also felt it important to create a space for non-traditional forms such as fiction, art and music so they are given a forum in *TWAILR: Extra*. In our first year, we welcomed a series of playlists exploring different issues, regions and languages through music, as well as science fiction and

illustrated essays. We hope that together these avenues will enable TWAILers to explore imperialism in a way accessible to other disciplines and foster more interdisciplinary conversations. Moreover, this *Review* remains open to different mediums and forms of expression to mitigate against elite and exclusive tendencies of academic publishing.

From a bleary-eyed breakfast in noisy downtown Cairo to lunch on an eerily silent hillside in Palestine, from a birthday dinner in Canada to a bus ride in Singapore, members of this editorial collective deliberated on the tactics of knowledge production over many years before concluding that a TWAIL-specific publication forum was needed. We were mindful of discussions within the broader TWAIL community and proceeded with the advice and support of our wonderful advisory board.<sup>4</sup> TWAILers have been consistently conscious of carving out time and space at their events for self-reflection on the best ways to evolve and expand the network without unduly formalizing it. Looking back, the conventional practices of pre-COVID academic life – TWAIL gatherings in Oregon, Cairo, Ireland and Singapore, a conference on decolonizing law in Windsor, a human rights event in Palestine – brought us together and enabled these evolving strategy sessions. But, as always, much of the self-reflection and action was shaped outside formal academic structures through our friendships and, inevitably, over food. Over time, our own praxis evolved, as we experienced how conferences, journals, tenure, promotion, and all the other scaffolding of academic life could, at its best, provide knowledge, opportunity, solidarity and support. We also saw how academia can systematically alienate and silence certain voices and interests while rewarding others – reproducing structural violence not only on the grand scale of international relations but in the everyday practices of academic life.

Since academic publications have been part of how such exclusion and subordination is structured, this journal takes a conscious stand against duplicating harmful practices. Learning as we go, over our first year we have endeavored to be guided by TWAIL's goals in our choice of board members and reviewers; our commitment to joint decision-making; attentiveness to the politics of publication, peer review, and citation; and sensitivity to authors that may face political, economic, familial, health, education, language or other forms of disadvantage to an extent unfamiliar to those ensconced within the security and privileges of elite academia. The COVID-19 pandemic has also taken its toll on the work rhythms and care priorities of our authors and reviewers, and ourselves. Inevitably, being cognizant of these various challenges has entailed working more slowly than we have done on other projects, and indeed at a more deliberate pace than is generally

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<sup>4</sup>The members of the inaugural *TWAIL Review* advisory board are Georges Abi-Saab, Penelope Andrews, Antony Anghie, Reem Bahdi, Mohammed Bedjaoui, Hilary Charlesworth, BS Chimni, Cyra Choudhury, Kimberlé Crenshaw, Richard Drayton, Richard Falk, James Gathii, Carmen Gonzalez, Ardi Imseis, Beverly Jacobs, Karin Mickelson, Vasuki Nesiah, Liliana Obregon, Obiora Okafor, Anne Orford, Sundhya Pahuja, Vijay Prasad, Balakrishnan Rajagopal, Natsu Saito, and Muthucumaraswamy Sornarajah.

tolerated within an increasingly corporate and results-driven academic environment. Patience is necessary not only for nurturing scholars that face hurdles but to ensure that we proceed with self-reflection and care to avoid replicating habitual academic behavior that is not in line with TWAIL's goals of justice and solidarity.

TWAIL is committed to the interests of the *peoples* of the global South and, as Anghie and Chimni famously pointed out, this does not always align with the interests of their states.<sup>5</sup> This *Review* shares such a political commitment and – in addition to taking a firm stance against imperialism, colonialism, genocide, slavery, apartheid and racism – *TWAILR* does not provide a forum for scholarship that blindly supports reactionary or authoritarian regimes, whether in the global North or global South. Rather, we provide a space for critical approaches that are cognizant that 'the practices of Empire of course are not confined by any means to Western states'.<sup>6</sup> We promote scholarship that does not intentionally or inadvertently lend support to postcolonial actors that reproduce oppression within their own societies and in their international relations. *TWAILR* stands in solidarity with the increasing number of journals in law and other disciplines that are committed to such a stance. Together we will ensure that knowledge production from the global South in service of disenfranchised peoples becomes the mainstream. Mickelson reflects that 'taking action can itself foster hope',<sup>7</sup> observing that such deeds are hope embodied.<sup>8</sup> The *TWAIL Review* is launched in this spirit, as an embodiment of our hope in a better politics – and a better politics of law – as well as the hope that the TWAIL community derives from working together.

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<sup>5</sup> Antony Anghie & B.S. Chimni, 'Third World Approaches to International Law and Individual Responsibility in Internal Conflicts' (2003) 2 *Chinese Journal of International Law* 77, at 83.

<sup>6</sup> Antony Anghie, 'Foreword: Welcoming the *TWAIL Review*' (2020) 1 *TWAIL Review* 1, at 4.

<sup>7</sup> Karin Mickelson, 'Hope in a TWAIL Register' (2020) 1 *TWAIL Review* 14, at 23.

<sup>8</sup> Maria Ojala, 'Hope and Climate Change: The Importance of Hope for Environmental Engagement among Young People' (2012) 18:5 *Environmental Education Research* 625, at 637, as quoted *ibid*, 23.





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[www.twailr.com](http://www.twailr.com)

[editors@twailr.com](mailto:editors@twailr.com)

[submissions@twailr.com](mailto:submissions@twailr.com)

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