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## THIRD WORLD APPROACHES to INTERNATIONAL LAW *Review*

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### Hope in a TWAIL Register

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#### **Abstract**

*This essay explores the role and importance of hope in TWAIL scholarship and activism as well as in current debates on environmental challenges, and climate change in particular. Beginning by differentiating hope from optimism and faith, the essay describes the distinctive role that hope has played at different stages of TWAIL. It then considers some insights that can be gleaned from the literature on hope in the environmental context, highlighting not only its importance in helping us to confront complex and sometimes overwhelming challenges, but also the need to recognize the different forms that hope can take. The essay concludes by emphasizing the importance of connection and community in building and maintaining hope.*

#### **Key Words**

hope; optimism; environment; climate change; TWAIL

### **1 Introduction**

It is an honour to have been asked to contribute to the inaugural issue of TWAILR. The editors have invited me to address the theme of my presentation at the 2018 TWAIL conference at the National University of Singapore. At that gathering, I had the privilege of helping to start our collective conversation along with James Gathii. While James provided a synthesis of 21 years of TWAIL history and showed the impact the movement has had both within and outside the academy, I took on the task of looking to the future, which in turn led me to address the importance of hope. In this essay, I will build on that presentation while attempting to maintain the same conversational tone so as to make this part of an ongoing dialogue among TWAIL scholars.

Thinking and worrying about the future seem to have become more widespread in recent years, as we have found ourselves in a present that has often felt like a cross between reality TV and dystopian science fiction. This has only deepened as the world confronts the COVID-19 pandemic. However, for those who work on

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environmental issues, future gazing has always been a kind of occupational requirement – although it could perhaps be better described as an occupational hazard, given the toll it can take on one’s peace of mind. More recently, predicting possible future trajectories has come to be seen as a crucial element of global environmental policy making.<sup>1</sup> While the scenarios offer a range of visions of the future, they share considerable common ground. And this could be said to boil down to one fundamental reality whether we are talking about climate change, biodiversity loss, or the state of the oceans: the truly frightening prospects for much of life as we know it on this planet if ‘business as usual’ continues.

When I hear the urgent calls for action, I recall what Walter Benjamin had to tell us about so-called states of emergency when viewed through a different lens: ‘The tradition of the oppressed teaches us that the “state of emergency” in which we live is not the exception but the rule.’<sup>2</sup> I have used Benjamin’s insight in my own work to emphasize that the invocation of future environmental cataclysm needs to be juxtaposed with the harsh present-day reality of so many around the world.<sup>3</sup> However, the environmental challenges we are facing – and climate change in particular – no longer pose only a threat of future cataclysm. I would argue that it is precisely a focus on the plight of the oppressed that must lend a sense of urgency to us all, since it is now clear that vulnerability to climate change intersects with multiple other forms of vulnerability, and is often most acute among peoples and communities who have done the least to contribute to the problem. The situation we are facing allows no choice as to whether to act, and forces us to acknowledge that inaction is itself a form of action.

Given the sheer scale of the problems we are facing, it is not uncommon to hear calls for radical change in value systems and/or societal transformation. Disciplines from history to psychology to literature are being asked what role they can play, and how their insights can be harnessed to help in this process. In asking what might allow that radical change or transformation to take place, there has been increasing attention to the role of hope and, on the flip side, the potentially paralyzing effects of despair.

TWAIL has both something to learn and something important to contribute to the discussion regarding hope. This is partly because law is one of the disciplines

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<sup>1</sup> For example, the development of climate stabilization scenarios has been fundamental to the work of the Intergovernmental Panel on Climate Change (IPCC).

<sup>2</sup> Walter Benjamin, ‘Theses on a Philosophy of History’ in Hannah Arendt (ed.), *Illuminations: Essays and Reflections* (Harry Zohn trans., Schocken, 1968) 253 at 257. Along the same lines, the Latin American World Model developed in the 1970s under the auspices of the Fundación Bariloche pointed out that catastrophic conditions ‘are already a reality for the majority of mankind ... To correct this situation must be the top priority of any vision of the world and its future.’ Amilcar Herrera et al., *Catastrophe or New Society? A Latin American World Model* (IDRC, 1976) 24.

<sup>3</sup> Karin Mickelson, ‘South, North, International Environmental Law, and International Environmental Lawyers’ (2000) 11 *Yearbook of International Environmental Law* 52, at 52.

that is being called upon to play a role; critical perspectives are urgently required to ensure that law's role in bringing us to the current precipice be revealed, but that its potential be kept in sight. As I will show, Third World scholars have successfully walked this tightrope for decades. Beyond that, TWAIL can benefit from the ways of thinking about hope that have emerged in both scholarship and activism in recent years, and these insights may themselves help calibrate our ongoing engagements with the international legal system.

As a final introductory remark, let me explain the title of this essay. Writing in 1998, I suggested that it would be useful to think of the Third World 'not as a bloc, but as a distinctive voice, or, more accurately, as a chorus of voices that blend, though not always harmoniously, in attempting to make heard a common set of concerns'.<sup>4</sup> More than twenty years later, I feel that the 'chorus of voices' may be a useful way of thinking of TWAIL itself. And so, this essay asks: what does hope sound like when sung in a TWAIL register?

## 2 Hope in TWAIL

While hope may be part of what marks the work of almost all those who identify with the Third World tradition in international legal scholarship, it may nonetheless be worthwhile to attempt to describe the distinctive role it has played at different stages, beginning with the early Third World scholars (sometimes referred to as TWAIL I),<sup>5</sup> moving on to TWAIL as a self-identified movement post-1997 (TWAIL II), and finally considering contemporary TWAIL analysis.

In order to do this, it is useful to begin by clarifying what we mean when we speak of hope. Terry Eagleton has emphasized the importance of distinguishing between hope and optimism.<sup>6</sup> He sees optimism as a 'quirk of temperament': optimists simply anticipate that things will turn out well.<sup>7</sup> In addition to being a character trait and thus not particularly admirable, Eagleton also sees optimism as having a darker side. Optimists, he argues, 'are conservatives because their faith in a benign future is rooted in their trust in the essential soundness of the present.'<sup>8</sup>

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<sup>4</sup> Karin Mickelson, 'Rhetoric and Rage: Third World Voices in International Legal Discourse' (1998) 16 *Wisconsin International Law Journal* 353, at 360.

<sup>5</sup> See Antony Anghie and B.S. Chimni, 'Third World Approaches to International Law and Individual Responsibility for Internal Conflicts' (2003) 2:1 *Chinese Journal of International Law* 77, at 79. I have expressed concerns in the past about the extension of the TWAIL acronym to encompass earlier generations of scholars, and I remain somewhat troubled by this. However, I will use the term TWAIL I to refer to the Third World legal scholars of the 1960s and 1970s both because this is now common usage and because I recognize the genuine respect and appreciation for their contributions that led to this categorization.

<sup>6</sup> Terry Eagleton, *Hope without Optimism* (University of Virginia, 2015).

<sup>7</sup> *Ibid.*, 4.

<sup>8</sup> *Ibid.*

I will return to Eagleton's insight later, but for now would simply highlight its value in understanding how hope might be said to differ from other concepts with which it is often linked. One need not accept Eagleton's scathing view of optimism to recognize that there is an important difference between confidence that things *will* work out,<sup>9</sup> and a sense that things *could* work out. The latter inevitably raises the question of what needs to be done to ensure that the desired state of affairs unfolds. Similarly, for the sake of conceptual clarity it is useful to distinguish hope from faith; one has (or lacks) hope in relation to a desired outcome, while one has (or, again, lacks) faith that a particular entity, process, or structure will help us achieve that outcome.<sup>10</sup> If one can be hopeful without being optimistic, it is equally true that hope for the future can exist even in an age characterized by eroding faith in mainstream institutions, including law.

Building on these distinctions, I propose one possible way of differentiating between the role of hope within the various generations of TWAIL scholarship: TWAIL I could be said to have optimism, faith in international law, and hope; TWAIL II lost the optimism but retained a degree of faith in international law as well as a sense of hope; while contemporary TWAIL analysis seems to be skirting the edge of losing faith in international law altogether while still somehow clinging to hope. Hope plays an important role in all three, but arguably is most crucial at the present time, when we can no longer rely on the buoyancy that the other two provide.

### *TWAIL I*

I have argued previously that it is both possible and worthwhile to emphasize certain fundamental commonalities in the work of the Third World scholars of the 1960s and 1970s: an awareness of the interconnectedness of seemingly distinct subject areas, an insistence on the imperative of justice, and a centering of history as fundamental to understanding both the content and the operation of international law.<sup>11</sup> Hope could be seen as an unidentified fourth common theme, although, as noted above, optimism and faith in international law also played important roles.

While I would not go so far as to interpret the optimism of TWAIL I scholars through Eagleton's blistering lens, their enduring confidence in the ultimate success of Third World initiatives is admittedly somewhat puzzling. As a classic example,

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<sup>9</sup> Note that Eagleton also differentiates between the optimist and the 'optimalist'; the latter assumes that 'we already enjoy the best of all possible cosmic arrangements', while the former 'may acknowledge the shortcomings of the present while looking to a more lustrous future'. *Ibid.*

<sup>10</sup> Along the lines of the distinction between optimism and hope, it may also be worth differentiating between faith and blind faith.

<sup>11</sup> Mickelson (1998).

consider the view expressed by Mohammed Bedjaoui in 1979 in *Towards a New International Economic Order*. In the concluding section, having traced the erosion of Third World solidarity in the context of the law of the sea negotiations, he goes on to insist:

For all that, one cannot doubt the inevitable coming of the new international economic order. Like a river whose course is shaped by the obstacles it encounters but which will unfailingly flow into the sea, the concept of the new international economic order can prolong or delay its course in meanderings, or lose its way a thousand times in chasms which the speleologists of international law will explore, before finding concrete and complete expression in international relations.<sup>12</sup>

Similarly, while Bedjaoui was acutely aware of the conservative nature of law in general,<sup>13</sup> and his critique of mainstream international law was among the most far-reaching and profound of any Third World scholar at the time, he maintained faith in the ability of law to respond to Third World demands. In fact, he felt that to a certain extent it already had, and in so doing had been transformed: 'The main feature of international law is in fact its present multi-dimensional nature. It is to traditional international law what three dimensional geometry is to plane geometry.'<sup>14</sup>

That faith in international law was closely connected with hope for the future, which in Bedjaoui's view, at least, was not limited to what could be achieved through top-down legal reform:

The new international economic order is one of hope. This can only be the result of the historical action of peoples. Man's intelligence, used as a critical weapon, as social awareness and as an instrument of the integrated construction of society, constitutes a supreme means of effecting change. It is this intelligence which will reject an economic and social model founded, as is the case today, on irrationality and irresponsibility.<sup>15</sup>

Bedjaoui nonetheless goes on to question what it might take for this change to finally occur, alluding to the violence and disorder that might take place during the period of transition.

To the extent that Bedjaoui might be seen as representative of TWAIL I scholarship, hope seems to outweigh optimism and faith in international law, although all three play a role. This is consistent with how Judge Christopher Weeramantry described the tenor of the times during a presentation he gave in 2000:

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<sup>12</sup> Mohammed Bedjaoui, *Towards a New International Economic Order* (UNESCO, 1979) 260-261.

<sup>13</sup> Ibid, 14.

<sup>14</sup> Ibid, 259.

<sup>15</sup> Ibid, 261.

At that time, there was a spirit of hope in the Third World that all these newly resurgent countries would eventually achieve true freedom and a significant reign of justice within themselves and among themselves. But unfortunately, that vision has receded, and it is for us to do our best to revive and rekindle that spirit of hope that prevailed twenty-five years ago.<sup>16</sup>

## *TWAIL II*

When TWAIL emerged as a self-identified movement in the late 1990s, efforts were made both to trace the continuities to earlier Third World scholars and to explain the differences in perspective and approach.<sup>17</sup> Antony Anghie and B.S. Chimni's influential account of the relationship between the two generations highlighted in particular the ways in which TWAIL II went beyond what they characterized as TWAIL I's 'relatively unproblematic view of international law', which 'saw its task as using the established techniques of international law to address Third World concerns'.<sup>18</sup> According to Anghie and Chimni, the failure of Third World initiatives such as the New International Economic Order led TWAIL II scholars to question 'the fundamentals of the discipline',<sup>19</sup> and in turn to adopt a cautionary view of its structures and doctrines:

While seeking to reconstruct international law, TWAIL's approach to the discipline is based on a philosophy of suspicion because it sees international law in terms of its history of complicity with colonialism, a complicity that continues now in various ways with the phenomenon of neocolonialism, the identifiable and systematic pattern whereby the North seeks to assert and maintain its economic, military and political superiority.<sup>20</sup>

The suspicious stance that Anghie and Chimni identify (and advocate for) in this passage seems difficult to reconcile with the faith in international law that I have suggested remains characteristic of TWAIL II. However, they identify both idealistic and pragmatic reasons for remaining engaged with the discipline:

There are at least two reasons ... why TWAIL scholars are unwilling to depart the arena of international law, notwithstanding the injustices that international law has inflicted on the Third World, and the disappointments of TWAIL I. First, TWAIL scholars believe in the transformative potential of international law and in the ideal of law as a means of constraining power ... Second, and equally importantly, there are

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<sup>16</sup> Christopher J. Weeramantry, 'International Law and the Developing World: A Millennial Analysis, Keynote Address' (2000) 41:2 *Harvard International Law Journal* 277, at 280.

<sup>17</sup> See generally Anghie and Chimni (2003) 79-84.

<sup>18</sup> *Ibid.*, 84.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*, 96.

real dangers in conceding the entire arena of international law to other methodologies and actors in the aspiration to find a more powerful discourse which would render injustice with such clarity and persuasion that it would compel the changes in international relations which TWAIL seeks.<sup>21</sup>

This could be characterized as faith in international law – for how else, in fact, are we to understand the avowed belief in its ‘transformative potential’? However, it differs considerably from the faith of TWAIL I scholars; it is more ambivalent, and certainly more guarded. Anghie and Chimni are all too aware of the tensions and inconsistencies that the Third World is forced to navigate in the international system, and they are no longer optimistic, at least not in Eagleton’s sense of being confident about the outcome; TWAIL I’s bold yet ultimately unsuccessful attempt to reframe international law looms large. However, Anghie and Chimni’s assertion that it is the experience of Third World peoples (as opposed to Third World states) that must be ‘the interpretive prism through which rules of international law are to be evaluated’,<sup>22</sup> points to an enduring and crucial source of hope:

By evaluating positivist rules through the lens of the lived experience of Third World peoples, TWAIL scholars seek to transform international law from being a language of oppression to a language of emancipation – a body of rules and practices that reflect and embody the struggles and aspirations of Third World peoples and which, thereby, promotes truly global justice.<sup>23</sup>

### *Contemporary TWAIL Analysis*

If TWAIL II raised concerns about TWAIL I’s ‘relatively unproblematic’ view of international law,<sup>24</sup> more recent TWAIL analysis (what some might call TWAIL III or a higher number beyond that), may call into question TWAIL II’s own inability to extricate itself from the grand narratives of international law.<sup>25</sup> Writing 15 years after Anghie and Chimni, Usha Nararajan continues to invoke the potential of international law, but her analysis seems a few steps further removed from the faith in international law that can be detected in their work. While Anghie and Chimni’s allusion to TWAIL’s ‘philosophy of suspicion’ spoke of seeing ‘international law in terms of its

<sup>21</sup> Ibid, 100-101.

<sup>22</sup> Ibid, 78.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid, 84 (quoted at greater length above in the text accompanying note 18).

<sup>25</sup> In terms reminiscent of Anghie and Chimni’s discussion of TWAIL I, Luis Eslava and Sundhya Pahuja have noted that ‘[b]asic questions about the nature of international law sometimes seem an absent subject of analysis within the smorgasbord of TWAIL and TWAIL-friendly approaches’. Luis Eslava and Sundhya Pahuja, ‘Between Resistance and Reform: TWAIL and the Universality of International Law’ (2011) 3:1 *Trade, Law and Development* 103, at 105.

history of complicity with colonialism,'<sup>26</sup> Natarajan interprets this phrase more broadly:

TWAIL is a 'philosophy of suspicion', not seeing international law as emancipatory, protective, or even indifferent to the Third World. Rather, TWAIL scholars argue that international law is oppressive and subordinates the Third World.<sup>27</sup>

Natarajan's is a much more sweeping indictment of international law. This may be in part because she is drawing on a number of other TWAIL II scholars whose view of international law is even less positive than that of Anghie and Chimni.<sup>28</sup> Nevertheless, it is telling that she chooses to favour this interpretation rather than the more cautious formulation adopted by Anghie and Chimni themselves. To the extent that some degree of faith in international law remains, it seems attenuated and almost reflexive, as if this is something that needs to be said rather than a deeply held conviction.

However, while we may thus be witnessing a gradual eclipse of the view that international law itself is a source of hope, I would argue that this is far from telling the whole story. Natarajan herself ends by stating the need to rethink 'the problematic assumptions about nature that underlie international law.'<sup>29</sup> While she questions the extent to which 'we can reconfigure our disciplinary inheritance to respond with justice to the myriad ecological crises facing the peoples of the global South',<sup>30</sup> it is a challenge that she calls on scholars to take up. Julia Dehm's work is similarly instructive; while deeply skeptical of the international climate regime and its capacity to respond to either the ecological or the social implications of climate change, she remains resolutely committed to finding space for marginalized voices, and in them, still seems to find some room for hope.<sup>31</sup> The shift in focus may suggest a way past TWAIL's tempestuous engagement with international law, while also having the benefit of consistency with TWAIL's stated commitment to prioritizing the lived experiences of Third World peoples.

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<sup>26</sup> See Anghie and Chimni (2003) 218 (quoted at greater length above in the text accompanying note 20).

<sup>27</sup> Usha Natarajan, 'Third World Approaches to International Law (TWAIL) and the Environment', in Andreas Philippopoulos-Mihalopoulos and Victoria Brooks (eds.), *Research Methods in Environmental Law: A Handbook* (Elgar, 2017) 207 at 218 (footnotes omitted).

<sup>28</sup> One of the sources Natarajan cites in support of this view is Makau Mutua, 'What is TWAIL?' (2000) 94 *ASIL Proceedings* 31. Mutua begins by stating bluntly: 'The regime of international law is illegitimate. It is a predatory system that legitimizes, reproduces and sustains the plunder and subordination of the Third World by the West.' (footnotes omitted).

<sup>29</sup> Natarajan (2017) 235-236.

<sup>30</sup> *Ibid.*, 236.

<sup>31</sup> Julia Dehm, 'Reflections on Paris: Thoughts Towards a Critical Approach to Climate Law' (Sept 2018) *Revue québécoise de droit international* 61.

### 3 Contextualizing Hope

I have suggested above that TWAIL has abandoned optimism and seems to have retained only attenuated faith in the promise of international law, yet still clings to hope. I would argue further that hope plays a critical role in TWAIL's engagement with international law, yet remains largely invisible and undertheorized. The discussion that follows attempts to sketch out some of the recent thinking about hope that may offer some useful insights for TWAIL at the present time.

The starting point of this essay highlighted the imperative of hope in the face of the seemingly overwhelming environmental challenges facing us today, and climate change in particular. It is not surprising that so much of the scholarly literature on hope has an environmental focus. While hope plays a role in almost any social struggle, it is even more central when we are dealing with climate change, where we confront possibly irreversible harm on a massive scale, such that quite literally no one might be said to be entirely unaffected. However, as noted previously, there are peoples and communities who are particularly vulnerable,<sup>32</sup> as well as others who may be able to insulate themselves to a much greater degree. In recent years, concerns about climate vulnerability and how it intersects with other forms of inequality have increasingly come to be framed as demands for 'climate justice', although this has received only limited recognition in mainstream law and policy.<sup>33</sup>

When dealing with climate change, then, analyzing the role of hope is complicated by the fact that there are such widely varying positions. Assume for the sake of argument that we can identify an 'inside' and an 'outside' in the current debate: those who see themselves as part of the climate justice movement, and those who do not. In the latter, we have what one might call ordinary citizens, who are either concerned about the environment but unsure as to how best to channel their energies, or perhaps simply confused about the extent to which there actually is a problem that demands action. Within the movement for climate justice itself, it is possible to differentiate between two positions, with a range of possibilities in between. On one side we have those on the frontlines of the struggle whose lives are clearly and directly affected, such as Indigenous peoples and communities in areas particularly vulnerable to climate change such as low-lying and small island states. On the other side we have those who may themselves not have encountered the immediate effects of climate

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<sup>32</sup> The 2002 *Bali Principles of Climate Justice* noted that 'the impacts of climate change are disproportionately felt by small island states, women, youth, coastal peoples, local communities, indigenous peoples, fisherfolk, poor people and the elderly.' International Climate Justice Network, *Bali Principles of Climate Justice*, presented at the United Nations World Summit on Sustainable Development, Johannesburg, South Africa (29 August 2002) <http://www.ejnet.org/ej/bali.pdf>.

<sup>33</sup> For example, Preamble paragraph 13 to the 2015 *Paris Agreement on Climate Change* notes 'the importance for some of the concept of "climate justice", when taking action to address climate change'.

change, but who feel that their governments have failed to adequately respond to this challenge and in so doing have failed them: I think here in particular of youth, but also committed citizens from around the world. Hope may look very different depending on one's position along the spectrum.

We know that hope plays a critical role in galvanizing public action on issues such as climate change. This is especially true for youth. Research in the fields of environmental psychology and environmental education has shown that pessimism and dread regarding environmental challenges such as climate change is widespread amongst young people, and that it is important to inculcate a sense of hope for the future.<sup>34</sup> However, Maria Ojala has highlighted the importance of differentiating between what she refers to as 'constructive hope' and hope based on denial of the seriousness of the problem.<sup>35</sup> Ojala's findings dovetail with Eagleton's differentiation between hope and optimism; what she calls 'hope based on denial' looks a great deal like an optimistic view that everything will work out in the end.

A sense of hope may be a necessary (though not sufficient) basis for public action, but it is also important for those engaged in the climate justice movement. However, there is evidence that activists may not be paralyzed by their occasional (or frequent) despair in the face of mounting evidence of crisis. Karen Nairn's work on young climate change activists in New Zealand supports the view that there is a more complex interplay between hope and despair than one might assume, and that despair can also galvanize action.<sup>36</sup> Furthermore, taking action can itself foster hope; as Ojala explains, '[w]hen people start to do something concrete it seems as if hope is evoked by the actions themselves. Hope, in a sense, becomes embodied.'<sup>37</sup> There is of course a certain irony in this virtuous circle (those that engage gain hope, while those on the outside need hope in order to engage).

Of particular interest to TWAIL, responses to climate change amongst activists can look very different depending on where one is situated geographically. A study published in 2017 by Jochen Kleres and Åsa Wettergren, based on interviews that included participants from Conferences of the Youth held in 2014 and 2015,<sup>38</sup> found

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<sup>34</sup> See for example Maria Ojala, 'Hope and Climate Change: The Importance of Hope for Environmental Engagement among Young People' (2012) 18:5 *Environmental Education Research* 625; Karen Nairn, 'Learning from Young People Engaged in Climate Activism: The Potential of Collectivizing Despair and Hope' (2019) 27:5 *YOUNG* 435.

<sup>35</sup> Ojala (2012) 636.

<sup>36</sup> Nairn (2019) 12. Nairn draws inter alia on the work of Paolo Freire to support the view that hope can 'educate' despair.

<sup>37</sup> Ojala (2012) 637.

<sup>38</sup> These events were held in advance of the 20<sup>th</sup> and 21<sup>st</sup> Conferences of the Parties to the *United Nations Framework Convention on Climate Change*.

that youth activists from the global North were motivated by 'an abstract fear of climate change', while those from the global South articulated 'an experience of climate change as an already manifest reality with devastating consequences'.<sup>39</sup> Northern activists were more likely to focus on positive narratives while those from the South tended to express anger, focused in particular on Northern responsibility for the problem. Kleres and Wettergren note, 'Hope in one's own (collective) action is not absent in the angered activists, but it is no longer hope as a choice to be pleurably and creatively enjoyed; it is rather hope as a necessity to sustain any action at all.'<sup>40</sup> They also suggest that this can be seen as a kind of 'post-apocalyptic [activism] ... that responds to an already ongoing catastrophe.'<sup>41</sup>

In a similar vein, Kyle Whyte, a Potawatomi scholar-activist, has emphasized that climate change is just the latest in a series of catastrophes experienced by Indigenous peoples in the aftermath of colonialism.<sup>42</sup> Indigenous struggles for climate justice are thus part of a much longer struggle, and just as these struggles need to be understood in their distinctive cultural and historical contexts, so does the hope that animates them. Jonathan Lear has described the hope that can help a people endure a total disruption of their culture as 'radical hope,'<sup>43</sup> drawing on the legacy of Plenty Coups, who led the Crow Nation in the late 1800s and early 1900s. According to Lear, Plenty Coups embraced a distinctive form of hope '[p]recisely because [he saw] that a traditional way of life was coming to an end.' Lear describes this as 'the hope for revival: for coming back to life in a form that is not yet intelligible.'<sup>44</sup> This understanding of hope may have particular resonance for those most vulnerable to climate change.

The sense of solidarity that exists amongst those involved in the climate justice movement should not be allowed to erase differences in either position or perspective, which will almost certainly affect the way that hope is experienced and understood. However, we should not lose sight of the fact that there is considerable common ground between the fear amongst those as yet unaffected and the anger of those who already see the effects of climate change. This may be because it is becoming increasingly apparent that no one is unaffected, and that outrage is a reasonable and

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<sup>39</sup> Jochen Kleres and Åsa Wettergren, 'Fear, Hope, Anger and Guilt in Climate Activism' (2017) 16:5 *Social Movement Studies* 507, at 516.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> Kyle Whyte, 'Indigenous Climate Change Studies: Indigenizing Futures, Decolonizing the Anthropocene' (2017) 55:1-2 *English Language Notes* 153.

<sup>43</sup> Jonathan Lear, *Radical Hope: Ethics in the Face of Cultural Devastation* (Harvard, 2006) 1.

<sup>44</sup> Ibid, 95.

perhaps even a necessary reaction. Greta Thunberg, the young Swedish climate activist, may have struck a chord with many precisely for this reason when she spoke at the UN Climate Action Summit in September 2019:

People are suffering. People are dying. Entire ecosystems are collapsing. We are in the beginning of a mass extinction, and all you can talk about is money and fairy tales of eternal economic growth. How dare you! How dare you continue to look away and come here saying that you're doing enough, when the politics and solutions needed are still nowhere in sight ...<sup>45</sup>

Circling back to Benjamin's thesis regarding the tradition of the oppressed, it is worth recalling that it did not end with the lesson that the state of emergency is the rule rather than the exception. Benjamin went on to assert that '[w]e must attain to a conception of history that is in keeping with this insight. Then we shall clearly realize that it is our task to bring about a real state of emergency ...'<sup>46</sup> At a time when business as usual still seems to be the order of the day even in the face of overwhelming evidence of the need for a fundamental shift, Benjamin seems particularly prescient. And hope becomes ever more important. As Eagleton argues, 'Only if you view your situation as critical do you recognize the need to transform it ... True hope is needed most when the situation is at its starkest.'<sup>47</sup>

#### **4 Concluding Thoughts: Hope in Connection**

I began this essay by suggesting that TWAIL can both contribute to and learn from current discussions about hope. The survey of the role of hope in TWAIL's engagement with international law shows that hope is possible without optimism regarding a desired outcome or faith in a particular means of achieving it, and may in fact be all the more important in their absence. That survey also demonstrates that the TWAIL project as a whole is deeply marked by hope, not least because as Third World peoples continue to struggle in the face of what are seemingly impossible odds, it would be ludicrous for us to throw up our hands in despair. This may in part account for TWAIL's distinctive approach to critique, which has arguably helped it to avoid the potential danger of which bell hooks once warned:

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<sup>45</sup> National Public Radio, *Transcript: Greta Thunberg's Speech at the U.N. Climate Action Summit* (23 September 2019) <https://www.npr.org/2019/09/23/763452863/transcript-greta-thunbergs-speech-at-the-u-n-climate-action-summit>.

<sup>46</sup> Benjamin (1968) 257.

<sup>47</sup> Eagleton (2015) 5.

When we only name the problem, when we state complaint without a constructive focus on resolution, we take away hope. In this way critique can become merely an expression of profound cynicism, which then works to sustain dominator culture.<sup>48</sup>

The brief exploration of hope in the context of climate change highlights its importance in helping us to confront complex and sometimes overwhelming challenges, but also emphasizes the need to recognize different forms of hope. Hope for those on the frontlines of climate change, South or North, may take the form of angry or radical hope, and TWAIL is likely to take its stand in their midst. However, this does not mean we should dismiss other understandings of hope that may be essential to galvanize action among others and elsewhere.<sup>49</sup>

I would like to conclude, just as I did at TWAIL Singapore, by emphasizing the importance of connection and community in building and maintaining hope. One of the challenges with understanding hope is that it seems like an individual concern, and of course it has both individual and collective dimensions. Each of us finds hope in different ways and from different sources: our own circles of families and friends; cultural and religious traditions; communities based on different forms of identity; the natural world; art, literature or music. For me personally, an enduring source of hope is my work as a teacher. As bell hooks has said so beautifully, 'As teachers we enter the classroom with hope.'<sup>50</sup> I would find it ethically and emotionally impossible to teach without having a sense of hope, and would view it as an abdication of responsibility if I did not try to instill that in my students as well (or, at the very least, if I did not do my best to avoid draining them of hope).

In contrast, the scholarly enterprise can be a far less reliable source of hope. I began my own research at the intersection of environmental concerns and international law more than thirty years ago, during the lead up to the 1992 UN Conference on Environment and Development. I cannot deny that I had not only hope and faith in spades, but also optimism. Like many, I thought that the UNCED process, with its array of instruments including treaties on climate change and biodiversity, could represent a watershed moment for the international community's engagement with environmental issues. It seemed so obvious that environmental concerns were fundamentally interconnected with human well-being, and that this recognition could and would be used to reshape the international order. While the limitations of the existing instruments and principles were clear, I felt that the international community had taken a step in the right direction. As I began to explore

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<sup>48</sup> bell hooks, *Teaching Community: A Pedagogy of Hope* (Routledge, 2003) xiv.

<sup>49</sup> As this Issue goes to press during the COVID-19 pandemic, I have found myself pondering whether we should also revisit the value of optimism and faith in times of crisis.

<sup>50</sup> hooks (2003) xiv.

the work of the Third World legal scholars of the 1960s and 1970s, their confidence that the obvious injustices of the international economic order would inevitably lead to its transformation was both inspiring and haunting. As the years passed, optimism dissipated and my faith in the possibilities of mainstream international law in general and mainstream international environmental law in particular has been difficult to maintain. However, my hope has never wavered, and TWAIL itself has played an important role in that.

For those who self-identify as part of TWAIL, a sense of solidarity with Third World peoples is both an inspiration and a vital element of our work. But other forms of solidarity are no less real, and are also crucial. The first TWAIL II gathering in 1997 had a formative impact on the trajectory of my scholarship, and in fact on my identity as a scholar. It helped me feel that I was not alone, that I was part of a community that shared my dreams, fears and hopes. Since that time, more and more scholars and activists have come to be part of the TWAIL network. At TWAIL Singapore, I urged the participants to take advantage of the opportunity to build community. To meet, if they had not already done so; to renew old friendships and deepen acquaintanceships. I encouraged them not to be afraid to challenge each other, noting that some of the important insights I derived from the 1997 meeting were based on disagreement, but urged them to be sure to support each other as well. And so I end this essay in that same way. Take advantage of this new forum to exchange ideas, express disagreement, nurture each other, and, above all, to foster the community that will help us maintain hope at a time when it is so desperately needed by us all.

~



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