



# THIRD WORLD APPROACHES to INTERNATIONAL LAW *Review*



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## THIRD WORLD APPROACHES to INTERNATIONAL LAW *Review*

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### Foreword: Welcoming The *TWAIL Review*

*Antony Anghie* \*

The rich collection of articles contained in this inaugural issue of the *TWAIL Review* provides some measure of the extraordinary range and variety of scholarship that is now being produced by TWAIL scholars and their colleagues. It also suggests the progress TWAIL has made in the years since it emerged, at least in its current incarnation, in 1997. It is fitting that the issue includes articles by TWAIL stalwarts, Karin Mickelson and James Gathiï, as well as scholars who are at the beginning of their careers, such as Hailegabriel Feyissa and Ali Hammoudi who write insightfully, in contrasting and yet overlapping ways, on the theme of semi-colonialism. Geographically, the articles cover all three major continents of the Third World, with pieces focusing specifically on Ethiopia, Oman and the Middle East, Venezuela and Latin America more broadly. The approaches found in these articles range from the careful historical and doctrinal analysis of Fabia Veçoso’s examination of the Drago doctrine to Silvia Rivera’s exploration of the epistemology of the ‘double bind’ and its potential for creating new forms of knowledge, overcoming the confines of Eurocentrism. Paulo Bacca’s superbly clear introduction and informed engagement with Rivera is exemplary and communicates at a number of levels – personal, biographical, philosophical. Rajshree Chandra gives us a searching analysis of how the shift to the ‘international’ and a ‘cosmopolitan commons’ empowers the privileged and suppresses a moral economy founded on the notion of subsistence. We are also treated

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to Karin Mickelson's meditation on the importance of 'hope' in the context of international environmental law and James Gathii's subtle study of different strands in African international law scholarship and how this is manifested in the work of distinguished African scholars who outlined different versions and understanding of the right to development.

What we have here is a range of styles which transcend any conventional ideas of 'interdisciplinary' scholarship. And yet, the articles speak eloquently to each other as they explore in different ways some of the fundamental TWAIL concerns: how does imperialism reproduce itself in the contemporary world? How should we understand imperialism? Can international law be used to further the interests of Third World peoples? How do we transcend Eurocentrism and create the space for different voices – voices that are desperately needed as we live in a time when it seems an entire order and a whole vocabulary are in crisis and new ideas and approaches must emerge? TWAIL scholars have a crucial task to demonstrate how international law works, and to do so in ways that connect with and are accessible to our colleagues who are engaged in their own explorations of imperialism and its endurance – whether they are in the fields of literature, philosophy, music or any other ways of knowing. The rich collection we have here, the different voices and perspectives, points to ways in which this might be done.

A journal represents a tradition, whether that tradition is understood in terms of an approach, or subject matter, or national tradition. Journals may present themselves as eclectic, catholic, universal, open to all forms of inquiry and intent only on publishing 'good scholarship'. Experience suggests however that it is through the lens of a particular tradition that any work submitted to a journal is inevitably assessed and deemed worthy to be included, engaged with. The importance of a journal that would consolidate the TWAIL community and provide a forum for TWAIL scholars was understood very early on. Sometime around 2000, Obiora Okafor made a concerted effort to interest different publishers in establishing a TWAIL journal. If I remember correctly, only Kluwer, under the leadership that time of Alan Stephens – with his usual combination of vision, acuity and generosity – and Annebeth Rosenboom were interested and believed that such a journal was feasible and worthwhile. Shortly after that however, as Obi was trying to get the infrastructure of

the journal in place, Kluwer was taken over and the whole enterprise collapsed. At a time when TWAIL was still emerging, the TWAIL collective of the time simply did not have the energy and resources needed to revive the whole project. Fortunately, TWAIL scholarship was being published, gradually, in various journals including in spaces like the *European Journal of International Law*, the *Chinese Journal of International Law*, the *Indian Journal of International Law*, the *Leiden Journal of International Law*, the *London Review of International Law* and the *Harvard International Law Journal*. The other avenue for publication was the special issue – arising from various TWAIL conferences.<sup>1</sup> TWAIL scholarship appeared in a wide variety of forums, and this was important for the dissemination of TWAIL as readers of those journals who may not have encountered TWAIL before were given the chance to do so. TWAIL could not have flourished without the good will of many well-wishers and allies who recognized the value of TWAIL scholarship even if they did not explicitly identify as TWAILers. But it is surely also the case that many scholars working in the TWAIL tradition have felt that their scholarship has not been properly understood or assessed. I recall my many experiences as a reviewer for distinguished journals when I found myself at odds with my other colleagues because of the demands they made of what I thought were excellent articles that were critical of certain orthodoxies. It is for this reason that the appearance of the *TWAIL Review* is important – as an embodiment of a deep and rich tradition.

But there is more: a journal, and everything that accompanies it, is a community, and every writer needs a community and the solidarity it provides. A scholar, particularly a young scholar seeking now to establish herself is confronted with a host of complications. In addition to all the challenges presented by a rapidly changing academic environment, she is subject to the great stresses of publishing prolifically, teaching large and anxious classes and developing a profile, measurable by the metrics and rankings developed by our industry. Social media platforms have become essential parts of this process. These could serve important purposes in democratizing scholarship, as projects like *TWAILR* and *Afromomics* have themselves

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<sup>1</sup> These include special issues of the *Osgoode Hall Law Review*, the *International Community Law Review*, *Third World Quarterly*, the *Windsor Yearbook of Access to Justice*, the *Journal of International Criminal Justice*, the *Villanova Law Review*, the *Oregon International Law Review*, and the *Harvard International Law Journal*.

so successfully demonstrated. And yet, this whirl of statistics – of citations, retweets and likes – surely creates its own difficulties and anxieties. In the midst of all this my hope is that the *TWAIL Review* will be a haven and provide a different sort of forum to young scholars, that it will help them find their voice, engage with a community that may be critical but which is still sympathetic. And I have no doubt about the talent and number of younger TWAIL scholars that are seeking an outlet such as the *TWAIL Review*. I also hope that the *TWAIL Review*, like the remarkable *Afronomics Law* blog, will be an inspiration for other TWAIL scholars – especially those in the Global South – to create further forums to publish and promote TWAIL thinking and scholarship.

The publication of the *TWAIL Review* could not be more timely – for very unfortunate reasons. The tragic killing of George Floyd and the global protests that followed, and the outbreak of the COVID-19 pandemic and its effects are intersecting crises that reveal in very stark form all manner of inequalities and injustices which are structurally entrenched in the societies in which we live. Social and political developments have overtaken academic inquiry and we now witness scholarly commentary scrambling to respond to and explain these intersecting crises and provide solutions as various issues in international law, that have been somewhat neglected by the mainstream, have suddenly risen to inescapable prominence. As a result, issues such as the relationship between race, gender and inequality and the enduring effects of imperialism, have once again become the focus of scholarly discussion, conferences and blog posts. Indeed, United Nations Secretary-General Guterres's Mandela speech is quite startling in its engagement with all these issues that have been so central to TWAIL inquiry now for many years.<sup>2</sup> Many important initiatives will result. But this mainstream reawakening in interest in themes such as imperialism and race strike me as somewhat similar to what occurred after the Iraq war. Over time this interest subsided as new crises emerged and intellectual currency changed. Consequently overlooked was the profound underlying shift that had been made to the international order, as new forms of imperialism instantiated and expanded themselves and, most importantly, became normalized. Endless war, a war

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<sup>2</sup> 'Annual Lecture 2020: Secretary-General Guterres's Full Speech', *Nelson Mandela Foundation* (18 July 2020) <https://www.nelsonmandela.org/news/entry/annual-lecture-2020-secretary-general-guterress-full-speech> (accessed 20 September 2020).

without spatial or temporal limitations, that could be launched pre-emptively and globally seemed to have become accepted. And the practices of Empire of course are not confined by any means to Western states.

TWAIL continues to evolve, both in terms of its development of analytic tools and approaches, and its study of different areas of international law. A younger generation of TWAIL scholars (TWAIL III or IV?) have taken on this challenge and produced outstanding work that both builds on and also, equally importantly, departs from that of its predecessors – those of us belonging to an earlier generation (who understood ourselves as 'TWAIL II', likewise building and following and diverging from our 'TWAIL I' forebears of the decolonization era). Throughout all this change and development, TWAIL has, since its inception, focused on themes of imperialism, inequality and political economy, as it did from the outset often against intellectual fashion. It was surely courageous and prophetic of B.S. Chimni, if not eccentric, to write his groundbreaking book on Marxism and international law, *International Law and World Order* in 1993 – just as socialism was declared dead and buried by the mainstream, and neoliberal globalization was approaching its zenith. I venture to suggest, then, that no other contemporary tradition in international law provides better intellectual resources, or a more comprehensive body of literature than TWAIL to help us understand the imbrication of international law in some of the most pressing problems of our time, and also, hopefully, to think of the possible role of international law in addressing these problems and working towards the construction of a fairer international system. TWAIL scholarship is all the more relevant because issues of inequality, ethnic conflict, immiseration, ethno-nationalism and dispossession that were thought to be confined to the global South are now found everywhere. Imperialism and neoliberalism are intimately connected. The pandemic has revealed that it is not only the global South that is in need of 'good governance'. Bacca's engagement with Rivera concludes: 'there will always be colonialism'. We surely all hope this is wrong. But if it is correct, and history unfortunately suggests it is, then TWAIL will continue to have much to do. It is TWAIL that is universal.

It is one of the distinctive features of TWAIL that much of its work and innovation results from initiatives taken by younger scholars, who, despite facing daunting commitments and demands, make the dedicated effort to further TWAIL.

scholarship and support their colleagues and those interested in TWAIL. Several TWAIL conferences were organized by then-junior scholars who have also worked tirelessly in so many other ways to build a community of scholars and teachers through encouragement, mentoring, and support. It is this younger generation of scholars who, with their energy and daring brilliance have inspired us, their predecessors. I am very grateful.

I am deeply honoured to have been given the opportunity to write this foreword. I wish to thank and congratulate the editors of the *TWAIL Review*, for all their efforts and their wonderful achievement in making this publication, a true labour of love, possible. The *TWAIL Review* is a product of many years of hard work. I could not be more proud of them and their creation, this journal, which marks a further step in the TWAIL journey.

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