

Third World, Imperialism and Exigency of International Law Reform: An Evaluation of Twail Activity

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Abstract

Developing countries or emerging nations have time and again unified in one aspect, that is, in their opposition to the alleged unfair global order, composed and consisting of mainly developed nations. The term attributed to such developing nations, i.e. Third World, is in fact a political, geographical, and oppositional reality which by its nature itself, is distinguishable from the West. As a way of expression of this section, the TWAIL (Third World Approach to International Law) emerged which is a broad dialectic to the opposition of international law by the Third World nations. The 'TWAILian' approach consists of evaluating certain aspects of international law that are fundamentally oppositional to the interests of Third World Nations. The propagators of this approach are simply a network of scholars with the aim to establish a truly universal international law that also incentivizes a just global order.

The rise of such an idea is, in no small part, due to large scale robberies by Developed Nations on the economies of Third World countries, by way of imperialism. Post the colonial era, and with the advent of the United Nations, there was only a transfer of powers from the European Union to other developed nations which headed the various agencies of the United Nations. This has resulted in an International regime, which is, as believed by TWAIL scholars, tilted in favour of developed nations.

This paper analyses the protagonist nature of TWAIL against the International law, as applicable to Third World nations. This paper evaluates the activity of different generations of TWAIL, *vis-a-vis* TWAIL I and TWAIL II. It further examines the importance of TWAIL, in context of the present situation, and the reforms it has affected. It also analyses the situation in India and the beliefs of Indian scholars prescribing the above view.

KEYWORDS- Third World Nations, Global order, TWAIL, United Nations.

INTRODUCTION

In a utopian society, the concept of 'Third World' would not be a reality. But it is, however, a reality, distasteful as many may find it, which is only enhanced by the unequal and different histories that these countries have had in contradistinction to the others. This section of the world, composed mainly of such countries who have had a colonial history and been subject to imperialism have, since the post-colonial period, been apprehensive in their approach and involvement towards the modern international law. This may, in part be attributable to the fact that these freshly de-colonized countries primarily needed to dust and put their own affairs in order. The emergence of independent nations of the Third World in the post-colonial era coincided with the formation of the modern international law. Therefore, while the developed countries or the first world nations were involved in the composition of the international law, the third

world nations could hardly contribute at the time. They did, however, blindly subject themselves to this international law that was formed with not much consideration given to the interests of the third world nations. With gradual awakening of realization of scholars of various countries of the discriminatory international situation that had evolved around them, of a crippling nature that excluded them from making any significant contribution. This paper studies the situation of the developing countries, alternatively named the 'Third World', and the phenomenon of TWAIL or the 'Third World Approach to International Law'. 'Imperialism', 'Third World', and 'International Law Reform' are three concepts that are essential to the study of TWAIL and are discussed briefly herein.

Imperialism and Colonial Expansion

The phenomenon of imperialism is an age old concept that has over time left its mark across the globe and history. Folk lore written on various ancient empires, established by powerful kings through colonizing and re-colonizing across the globe is evidence of the fact that the practice had its seed in ancient thought. Initially, the concept may have started with discovery which would be followed by conquest, as in the case of Christopher Columbus. Modern imperialistic practices were however of a different nature, and often involved the domination by the more powerful, of those who were believed to be un-developed or barbaric in nature. There have been instances in history, when there were particularly vehement and infrequent attempts at colonization by various nations. During the 16th and the 17th centuries, nations such as England, France and the Dutch Republic established their own overseas empires, in direct competition with each other. This European ethos is constantly reiterated through the foundational concepts of 'sovereignty', 'self-determination', 'statehood' and the 'nation-state'. All of these concepts are rooted in the political, cultural and economic history of Europe¹. India is by far, one of the finest candidates for such a case study on imperialism because it was one of the most important colonies of the British Empire. Using a creole vocabulary derived from Marxism, World System Theory, Critical Legal Studies, and Foucault and more recently from Subaltern and Postcolonial Studies, TWAIL scholars have been able to trace the relationship of international law to the hegemonic concepts of colonialism and neo-colonialism, as well as their counter-hegemonic counterpart: decolonisation². The 'post' of a 'postcolonial' international law is therefore a marker of the continued, yet spectral, presence of 'colonialism', and of the way it's 'history' is still with us in discursive, ideological and material terms. An attention to post-colonialism accordingly invites a constant re-examination of the different ways in which the world is still haunted by the modes of understanding, relating and extracting that emerged in explicitly 'colonial' times³.

¹ Luis Eslava & Sundhya Pahuja, *Beyond the (Post) Colonial: TWAIL and the Everyday Life of International Law*, 45 JOURNAL OF LAW AND POLITICS IN AFRICA, ASIA AND LATIN AMERICA 195 (2012).

² Balakrishnan Rajagopal, *Counter-Hegemonic International Law: Rethinking Human Rights and Development as a Third World Strategy*, 27 THIRD WORLD QUARTERLY 767 (2006).

³ Eslava & Pahuja, *Supra* note 1 on 2.

A lot, perhaps too much, can be written on the evolution of colonization, but for the purpose of this topic it is only essential to mark the fact that imperialism had a very definite impact on the histories of the colonized countries which affected both; the way subsequent developments took shape in their nation as well as their position with respect to International Law.

The Third World Nations

Nearly half a century ago, during a period when the Cold War was just beginning, the world was divided into the Western Capitalists, the Soviet Socialists, and a third section, most of which refused to align with either of the former two. This section was mainly composed of former colonies. French Demographer, Alfred Sauvy wrote of 'Three Worlds, One Planet' in *L'Observateur* in which he primarily coined the term which described the third section- 'Third World'⁴. He explained that the term 'Third World' vis-à-vis the First and Second World (the industrialised capitalists and communist countries respectively) was comparable to the term 'Third Estate' with respect to the First and Second estates (i.e. the Clergy and the Nobility). Therefore, the nature of the term was political and not demographic. Although the phrase was used widely, it was never clear whether it was a clear category of analysis, or simply a convenient and rather vague label for an imprecise collection of states in the second half of the 20th century and some of the common problems they faced⁵

The Atlantic Charter, a document formulated during the war by Winston Churchill and Franklin Roosevelt on a warship in mid-Atlantic was issued on 14 August 1941 and spoke in general terms of a 'wider and permanent system of general security' which would afford to all nations the means of dwelling in safety within their own boundaries' at the end of the war. On January 1, 1942 representatives of twenty six allied nations affirmed this Charter and named themselves the United Nations.

In the talks between 1942 and 1944 which would ultimately culminate in the Bretton Woods Conference, both USA and Britain engaged in informal bilateral meetings to discuss how to produce stability and post war recovery. Britain was uninterested in establishing the organ that was to become the World Bank right up to the Conference. Additionally and more significantly Britain was not in favour of including other states in the talks and was particularly hostile towards the inclusion of Proto-Third World in the negotiations⁶, while USA on the other hand was keen to internationalize the proceedings. Later with the formation of United Nations and with the assumption of most of the important positions of the various agencies by powerful nations, the newly de-colonized nations were

⁴ALFRED SAUVEY, TROISMONDES, UNEPLANETE, (Sciences Po University Press) (1986); <http://www.jstor.org/stable/3768593>, Accessed on 24/08/2015

⁵B. R. Tomlinson, *What was the Third World*, 36 JOURNAL OF CONTEMPORARY HISTORY, 2(2003).

⁶ROBERT OLIVER, EARLY PLANS FOR A WORLD BANK (Princeton Studies in International Finance) (1971).

SundhyaPahuja, *Decolonising International Law- Development, Economic Growth and the Politics of Universality*, 520 U OF MELBOURNE LEGAL STUDIES RESEARCH PAPER (2011).

pushed down further and were forced to voluntarily re-submit to the directions of the new world order.

Many scholars allege that the end of the cold war meant the demise of the existence of the term 'Third World'. However such importance is unnecessary, as the growing north-south divide is sufficient evidence of the continuing relevance of the 'Third World'. Some allege that the critique of the category is a weapon that hegemonic states employ against the unity of the third world⁷. With acknowledgement of this fact, it is safe to assume that there is existence of the concept and that the concept for the purpose of TWAIL is alive, open and accessible to discussion.

INTERNATIONAL LAW REFORM

Each era witnesses the material and ideological reconstitution of the relationship between state sovereignty and international law. The changes are primarily driven by dominant social forces and States of the time. The era of globalisation is no exception to this rule. Globalisation is not an autonomous phenomenon. It is greatly facilitated by the actions of States, in particular dominant States⁸.

With development in international law after decolonization of most countries, a popular principle of international law was that all states, irrespective of whether they were willing or unwilling to be subjected to the international law, were equal. However, in practice the five permanent members of the Security Council made the decisions. The appointment meant the creation of five super sovereigns and the other sovereigns which are less important in stature, which simply comprised of rest of the entire world. The biggest blow to the latter was the allocation and assumption of the veto power by the five member nations of the Security Council, which meant that for any matter that would come up before the Security Council, even a single member could single-handedly make or break a decision. The rest of the world was therefore incapable of making any significant contribution to Modern International Law. This was therefore a post-colonial subjugation of the South which had to get its acts now attested by the North and the powerful forces, and this practice still prevails. The meaning of the term 'Democratic State' is being defined by International law and sovereign economic powers are relocated to international institutions, which limits the potential of Third World States to pursue self-reliant development. In summation, in the present international law regime, the interests of the transnational ruling elite which have come to have unprecedented influence in shaping global policies and law are sought to be accommodated.

NATURE AND EVOLUTION OF TWAIL

TWAIL was formed as a reaction to the seemingly 'hegemonic' exercise of powers on the Third World nations by the Colonizing Powers and later

⁷ B. S. Chimni, *Third World Approaches to International Law: A manifesto*, 8 Int'l Community L. Rev. 3 (2006).

⁸*Ibid.*

International law. It had emerged as a broad dialectic to the opposition of international law by the Third World nations. It may be described as a double ended tool aiming for both resistance as well as reform. This double engagement has the potential to provide tools both to delineate the colonial characteristic of the International Law and to work towards a meaningfully plural international normative order⁹. The latter possibility arises from a conceptualization in its nascent stage of a universality that is compatible with an understanding of international law as a project that is not imperial in nature. Alternatively, it has also been described as being both 'proactive' and 'reactive' in nature. It is said to be reactive in the sense that it responds to international law as an imperial project. But it is proactive because it seeks internal transformation of conditions in the Third World¹⁰.

Bandung was the symbolic birthplace of TWAIL, although the North-South confrontation draws heavily from Latin American opposition to the domination of the Third World by the industrialized West¹¹. The rise of TWAIL was in no small part, due to large scale robberies by developed nations on the economies of Third World countries, by way of imperialism. Post the colonial era, and with the advent of the United Nations, there was only a transfer of powers from the European Union to other developed nations which headed the various agencies of United Nations. This has resulted in an International regime, which is, as believed by TWAIL scholars, tilted in favour of the developed nations.

Although there is arguably no single theoretical approach which unites TWAIL scholars, they share both a sensibility, and a political orientation. TWAIL is more of an academic exercise, but its importance as the only reactionary tool to the subtle excesses of international regime in various forms over the Third World, cannot be understated. The propagators of this approach are simply a network of scholars with the aim to establish a truly universal international law that also incentivizes a just global order. Their approach consists of evaluating certain aspects of international law that are fundamentally oppositional to interests of the Third World Nations.

TWAIL is therefore not so much a method, as a political grouping or strategic engagement with international law, defined by a commonality of concerns¹². TWAIL is driven by three basic, interrelated and purposeful objectives. The *first* is to understand, deconstruct, and unpack the uses of international law as a medium for the creation and perpetuation of a radicalized hierarchy of international norms and institutions that subordinate non-Europeans to Europeans. *Second*, it seeks to construct and present an alternative normative legal edifice for international governance. *Finally*, TWAIL seeks through scholarship, policy, and politics to eradicate the conditions of underdevelopment in the Third World¹³.

⁹ Pahuja, *supra* Note 6 at 3.

¹⁰ MakauMutua, *What is TWAIL?* 94AM. SOC'Y OF INT'L L. PROC., 31 (2000).

¹¹ *Ibid.*

¹² Pahuja, *Supra* Note 6 at 3

¹³ Mutua, *Supra* Note 10 at 5.

TWAIL scholarship is broadly divided into two parts based on its evolution over time. The TWAIL I scholarship was produced by the post-colonial lawyers and more recent TWAIL II scholarship which was an improvement over the earlier version.

TWAIL I and TWAIL II

In the late 1960s and 1970s one of the foremost issues that occupied Third World approaches to Human Rights was the call for recognition of the right to development¹⁴. This generation of lawyers and propagators was often called TWAIL I. The TWAIL I scholarship was largely state-centric and its advocates were in favour of propagating and encouraging the development of international human rights which would lead to the alleviation of human hardships in the third world.

TWAIL II scholarship on the other hand developed in 1990s and while it mainly elaborated on the same premise as the earlier TWAIL scholarship, this time the scholars focused more on the people. One of the main contentions that they put forth was that the way in which the international law had developed had led to the promotion of the universal culture of human rights but without significant or adequate third world input.¹⁵

There is also a permeating concern of the TWAIL II scholars to identify and give voice to the marginalized people within Third World states- women, peasants, workers, minorities, who were believed to have been excluded from TWAIL I scholarship.

Though the TWAIL I scholars critiqued the genealogy of Modern International Law and its Eurocentric assumptions, they adopted a non-rejectionist stance towards many of its key doctrines. The TWAIL II scholars, however, have adopted a framework critical of the deference paid by the TWAIL I generation to the newly independent post-colonial state and its right to 'non-intervention'¹⁶.

NEED AND IMPORTANCE OF TWAIL

In an increasingly globalizing but unequal world where transcending of global boundaries is encouraged, and where the world is demanding a system of international democracy, a scenario of equal treatment of all countries would be extremely harmful to the third world nations. The economic, social, geographical and financial differences between the developed and the developing or the third world nations, makes it impossible to have a uniform system of governance that would treat each country alike. The unequal must be treated unequally and to that effect a common order of international law is not feasible- this forms the basis of the argument of the TWAIL scholars.

¹⁴Opeoluwa Adetoro Badaru, *Examining the Utility of Third World Approaches to International Law for International Human Rights Law*, 10 INT'L COMMUNITY L. REV. 379-380 (2008).

¹⁵*Ibid.*

¹⁶Prabhakar Singh, *Indian International Law: From a Colonized Apologist to a Subaltern Protagonist*, 23 LEIDEN J. INT'L L. 79 (2010).

NEED FOR INTERNATIONAL LAW REFORM

It is essential to understand the vitality of the presence of TWAIL and why it is necessary argue for reforms in the International law. Some of the major developments in the era of International Law need to be examined with reference to the effect they have on the third world states and people.

Firstly, the Third World nations have, through voluntarily undertaken obligations, seceded national economic space to international institutions that enforce relevant rules. In spite of the fact that the sovereign powers of a nation are relocated to International organizations, international law does not take global democracy seriously¹⁷.

Secondly, International law now aspires to directly regulate property rights, a key feature of which is the internationalization of property rights. This includes the privatization of state owned property through the medium of financial instruments.

Thirdly, International law, by the medium of various resolutions, treaties etc., lays down rules for various aspects of trade such as sale of goods, dumping, etc. Some of these rules are designed to protect the corporate sector of the first world from efficient production abroad even while the Third World markets are being thrown open for its benefit.

Fourthly, The first world is today using international financial institutions, and the ongoing negotiations relating to the General Agreement on Trade in Services (GATS), to compel third world States to accept monetary arrangements, such as capital account convertibility, which are not necessarily in their interests.¹⁸

Fifthly, labour market deregulation prescribed by international financial institutions and international monetary law has caused the deterioration of the living conditions of third world labour. Deregulation policies are an integral part of structural adjustment programs. They are based 'on the belief that excessive government intervention in labour markets – through such measures as public sector wage and employment policies, minimum wage fixing, employment security rules – is a serious impediment to adjustment and should therefore be removed or relaxed¹⁹.

Sixthly, There is, in the era of globalization, an intersection of jurisdictions which gives rise to multiple (or concurrent) and extra-territorial jurisdiction to a far greater extent than before. Where international law does not penetrate national spaces, powerful States put into effect laws that have an extraterritorial effect; third world States have little control over processes initiated without its consent in distant spaces²⁰

¹⁷ Chimni, *Supra* Note 7 at 4

¹⁸ Chimni, *Supra* Note 7 at 4

¹⁹ L.L. Lim, *More and Better Jobs for Women: An Action Guide*, Geneva: ILO 19–20.

²⁰ Chimni, *Supra* Note 7 at 4

Seventhly, the State is not an exclusive participant in the international legal process any more. With the entry of the concept of cross territorial treaties and agreements between corporate factors, there is an emergence of a state-less entity. Because of this, Corporations may take advantage of their position to avoid paying tax.

The concept of internationalization of human rights is also increasingly gaining importance and has turned into a global responsibility issue. The concept has come to have a pervasive presence in international relations and law. The situation in Third World, which is subject to human rights violation frequently, has to take into consideration while formulating regulatory policies for human rights.

IMPORTANCE AND UTILITY OF TWAIL

The majority of the entire concept of TWAIL exists on paper, yet its contribution in International Law literature has been significant. It can simply not be disregarded as something whose absence would not make a difference. On a review of the existing literature, several theoretical and substantive contributions of TWAIL are apparent.

We may examine certain aspects of its study, for instance, the field of International Human Rights Law. TWAIL helps in understanding the internal contradictions within International Law, particularly in the perpetuation of justice against the third world. For instance, international law purports to support the promotion of human rights but on the other hand it pays little attention to the practice of violation of human rights by international economic and trade law²¹. TWAIL addresses such issues in harmony with other related subjects in order to bring attention to the problems of the Third World.

A TWAIL perspective also helps scholars to appreciate the fact that human rights is not the correct way to answer all the evils that afflict the Third World. Such analysis helps scholars to realize that additional political and economic tools, of a nature which would lead to the revamping of the global political economy, are needed in order to help address human rights violations.

The need for the presence of TWAIL can be gathered from the following passage:

'TWAIL opposes the global hegemony of the West, which the United Nations legitimizes through the cloak of universality. TWAIL regards the structure of the United Nations, and in particular it's Security Council, as completely indefensible. The blatant disregard by the United Nations of crises in the Third World and the selective use of UN organs to advance the foreign policies of Western powers stand in direct contradiction of the high-sounding ideals of the world body. The West, led by the United States, polices every corner of the world, ready to pounce on those it deems a threat to its interests. Often, the United States does not even bother to enlist the United Nations in its military campaigns against member states against this

²¹ Badaru, *Supra* Note 14 at 6.

*backdrop, what is one to make of American opposition to attempts by some Third World states to acquire even a single nuclear weapon when the United States possesses ten thousand of them? Western control of the global economy and resources is a matter of public record. This disparity between the West and the Third World is so ingrained in public consciousness that is rarely a matter of serious political debate*²².

TWAIL IN INDIA

India had been relatively silent after Independence in the making of Modern International Law. The reasons for India's reticence are easy to predict. Cautiousness perhaps was one of the reasons and reluctance of post-independence lawyers to immediately engage in post-colonial international law. The post-independence regime in India, was based on power sharing among adversaries who were learning to handle new democratic instruments, in an embellished struggle for power. By the time India was ready to assume a place of significance in the International era, there was no place left in the international forum. Five world powers had been nominated as the permanent members of the Security Council, one of the most powerful organ of the United Nations.

The above being said, it is pertinent to state that India by itself, has time and again made contributions to building International Law. The *Panchsheel Agreement* of 1954 with China was an internationalisation of Indian good neighbour policy whose origins can be traced back to the civilizational matrix of ancient India. In an indigenous discourse in the *Panchsheel Agreement* with China, India had succeeded in establishing new principles of international law. This was an unprecedented Indian effort to intrude into the dominant fold of the first world to alter the vocabulary of Modern International Law by playing its role in, what some scholars identify as the politics of knowledge creation. These were the earliest State voices of resistance from the pre-subaltern India, raised in the post-colonial world, which was still terrorised by the ghosts of colonisation while suffering from cultural inferiority complex simultaneously. The communist Chinese arrogance of Security Council permanent membership, in Indo-China war of 1962, however, killed the opportunity that the democratic India presented to the third world, in teaching how to alter the dominant vocabulary and offer resistance to strong dominations of language in MIL. The Doha Health Declaration had a definite shade of India's ability to produce generic drugs at a rate, exponentially lower than its cost of production in developed countries during national emergencies. The WTO's Doha Round²³ is an important outlet that showcases India's increasing dynamic strategy, as removed from its Non-Aligned Movement agenda, where the primary tool of international relations is formation of alliances with new partners, Asian, Latin, European and African. The group of BRIC nations (Brazil, Russia, India and China) housing 40 percent of the world's population, has certainly increased the voice of India at various international *fora*: nothing progresses unless BRICs agree. This new Indian

²² Mutua, *Supra* Note 10 at 5.

²³ The Doha Development Round or Doha Development Agenda (DDA) is the current trade-negotiation round of the World Trade Organization (WTO) which commenced in November 2001.

strategy is markedly different from its earlier policies that had accepted a bipolar world. India, today, is one of those rare countries in the world to have bagged a civil nuclear deal with the United States without signing the Comprehensive Test Ban Treaty (CTBT).

Later, the formation of the South Asian Association for Regional Cooperation (SAARC) marked a definitive step in the Indian foreign policy, as it provided a platform for the peoples of South Asia to work together in a spirit of friendship, trust and understanding. Nonetheless, India has already paid the price for its involvement in UN peace keeping missions, when in 1991 the then Prime Minister Rajiv Gandhi was assassinated by the LTTE avenging India's decision to send peace troops to Sri Lanka.

In spite of the significant role that India has played, and continues to play in the field of International Law, there is very limited literature on TWAIL in India. The Indian Society of International Law remains the sole organization responsible for international law promotion in India. Only one recognized law journal, i.e. the Indian Journal of International Law exists on the subject. None of the major academic publishers such as Oxford University Press (OUP) or Cambridge University Press, among others, has an Indian-law-school-based international law journal publication.

However, Indian scholars have contributed to both TWAIL I and TWAIL II scholarship. R. P. Anand, Nagendra Singh, R. C. Hingorani, Guha Roy, S. P. Sinha, and YashGhai are some of the many stalwarts of the early thinkers' on alternative international law. The New thinking or the TWAIL II is led by BhupinderChimni, UpendraBaxi and BalakrishnaRajagopal, among other prominent writers.²⁴ However, seeing the contribution in the other areas, this may not be a very worrying concern. That being said, countries like India should certainly pick up the baton and lead in the development of the TWAIL ideology and formulation of a pro-third world alternative form of international law.

CONCLUSION

TWAIL asks vital questions. How and to what extent international law can be used for the purposes of furthering the interests of Third World peoples-protecting them against the excesses of the authoritarian and sometimes genocidal state, on the one hand, and advancing their interests in the international sphere on the other? Third World international lawyers had, immediately following the period of decolonisation, placed a special faith in international law, believing that it could achieve these results. However, this faith proved unfounded, and many international initiatives that were explicitly humanitarian and anti-colonial such as the Mandate System-became a vehicle for imperialism. As a result, some scholars have eloquently argued that the Third World should dispense with international law altogether. But this not a feasible option, simply because that would leave open the field of international law.

²⁴ Prabhakar Singh, *Supra* Note 16 at 7.

It is time that the abstractions of international law are rooted in the empirical world of ordinary life and its travails. These would yield insights and judgements that can then be deployed to shape international laws and institutions that benefit humanity²⁵. While theoretically, TWAIL is an effective exercise or methodology to register a voice of protest of the Third World in the International Law forum, and it suffers from some flaws, which slow down its effectiveness. The most important and perhaps obvious problem with TWAIL is that it is an academic practice and is theoretical in nature. The TWAIL perspective draws attention to important flaws in international institutions and prompts reflection about alternatives, but appears to leave the discussion of specific strategies to other fields of law and policy²⁶. With all its criticism of the International Law Order, a perusal of the material on the issues shows that there isn't a proposal for an alternative or an ideal International Law. It needs to move beyond intellectual and distant critique and move towards actually proposing or developing concrete means by which their suggestions or dissatisfactions can be addressed. Where there are failings in handling the Human Rights issues in various countries, alternatives and remedies ought to be suggested by the scholars. We need to ask – 'How can TWAIL work with social movements?' or 'How can the visions of TWAILers be further incorporated into the work of social movements on the ground?'²⁷ This is not to advocate that TWAIL should abandon its methodology of theoretical critique. It is only a call to incorporate more alternatives within our critiques. Another set-back, perhaps, is that the entire exercise of TWAIL scholarship takes place in the North, which is some-times the perpetrator of the injustice happening in the Third World. The law-students or scholars therefore get their knowledge on the concept of international law from the Northern mainstream scholarship. The idea of TWAIL should be brought and propagated to the South, and be taken up by the Third World nations.

In spite of the flaws, the well-settled position of TWAIL cannot be shaken. TWAIL now pervades various sections irrespective of the Geographical situation of the scholars propounding its objectives. As BalakrishnanRajagopal argued several years ago, it is sometimes appropriate to think of the Third World less in geographical terms, and more in terms of TWAIL's agenda of advocacy of oppositional practices that challenges power hierarchies and how they work.²⁸ Scholars identified as TWAIL scholars have served as Executive Council members in the largest international law society in the world, the American Society of International Law (ASIL). In addition, a prominent TWAIL scholar Antony Anghie was, in 2010 invited to deliver the main keynote at the ASIL Annual Meeting, the Grotius Lecture²⁹.

²⁵ B. S. Chimni, *The Past, Present And Future Of International Law: A Critical Third World Approach*, 8 MELBOURNE J. OF INT'L L. (2007)

²⁶ Gus Van Harten, *TWAIL and the Dabhol Arbitration*, OSGOODE HALL LAW SCHOOL RESEARCH PAPER SERIES, 27 (2011).

²⁷ Badaru, *Supra* Note 14 at 6

²⁸ BalakrishnanRajagopal, *Locating the Third World in Cultural Geography*, 1 THIRD WORLD LEGAL STUD., 2 (1999).

²⁹ James ThuoGathii, *TWAIL: A Brief History Of Its Origins, Its Decentralized Network, And A Tentative Bibliography*, 3(1) TRADE L. & DEV. 26 (2011).

The study of this concept should be incentivized as a particularly important one as it is a way for the way towards becoming even more financially and socially settled in the field of International Law. It is hoped that this analysis of the existing structure will in some way contribute to both promoting emancipatory pedagogy and critical international legal scholarship in India so crucial to the realization of its national interests.

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